



CHILD LABOUR IN LOCK INDUSTRY AN EMPIRICAL STUDY OF ALIGARH

DISSERTATION

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE AWARD OF THE DEGREE OF**

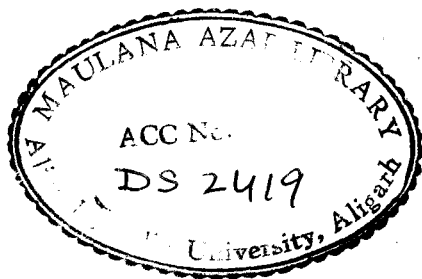
Master of Laws

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**DEDICATED
TO
MY LOVING PARENTS**

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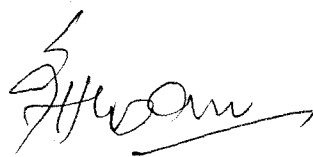
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This is to certify that Mr. Zafar Abbas has completed his dissertation on " Child Labour in Lock Industry - An empirical Study of Aligarh" in partial fulfilment of the requirement for the award of degree of Master of Laws under my supervision.

I wish him all the success in life.


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C O N T E N T S

CHILD LABOUR IN LOCK INDUSTRY — AN EMPIRICAL STUDY OF ALIGARH

	Page No.
<u>ACKNOWLEDGEMENT</u>	.. 1 - 11
<u>INTRODUCTION</u>	.. 1 - 6
 <u>CHAPTER-I. CONCEPT, HISTORY AND DEVELOPMENT OF CHILD LABOUR</u>	
1. Concept of child labour	.. 7 - 12
2. Historical resume	.. 12 - 18
3. Development of child labour in India	.. 18 - 27
4. I.L.O. in pursuit of child labour	.. 27 - 30
 <u>CHAPTER-II. FACTORS RESPONSIBLE FOR CHILD LABOUR</u>	
1. Chronic Poverty	.. 34 - 38
2. Cheap Labour	.. 38 - 40
3. Absence of provision for compulsory and free education upto 14 years age	.. 40 - 43 .. 43 - 45
4. Large family	.. 45
5. Family occupation	.. 46 - 47
6. Child of migrant workers	.. 47 -
7. Ineffective Legislation	.. 48 -
8. Other reasons	.. 48 - 59

CHAPTER -III. VARIOUS STATUTES PROHIBITING OR
REGULATING CHILD LABOUR

.. 50 - 52

1.	The Factories Act, 1948	.. 52 - 59
2.	The Children (Pledging of Labour) Act 1933	.. 60 - 61
3.	The Employment of Children Act, 1938	.. 61 - 63
4.	The Minimum Wages Act, 1948-Rules made there under by Central Government.	.. 63 - 64
5.	The Plantation Act 1951	.. 65 - 67
6.	The Mines Act, 1952	.. 67 - 69
7.	The Merchant Shipping Act 1958	.. 69 - 70
8.	The motor transport workers Act, 1961	.. 70 - 71
9.	The Apprentices Act, 1961	.. 72 - 73
10.	The Atomic Energy Act 1962	.. 73
11.	The Beedi and Cigar Worker (Conditions of Employment), Act 1966	.. 74 - 76
12.	Shops and Establishments Acts in various States.	.. 76 - 79
13.	Child Labour (Prohibition and Regulation) Act, 1986	.. 79 - 83
(A)	Recommendation of Government Committees.	.. 85
(B)	Salient feature of the child labour Prohibition & Regulation) Act, 1986	.. 83 - 84
(C)	Problems of implementation of the Act.	.. 86 - 88
(D)	Short Coming of the Act	.. 88 - 90

CHAPTER- IV. <u>CONSTITUTIONAL SAFEGUARDS AND</u> <u>JUDICIAL ATTITUDE</u>	91 - 92
1. Constitutional provisions relating to Child labour	•• 92 - 96
2. Judicial attitude on abolition or regulation of child labour	•• 97 - 102
CHAPTER- V. <u>SURVEY REPORT ON CHILD LABOUR IN</u> <u>LOCK INDUSTRY AT ALIGARH</u>	•• 103 - 120
<u>C O N C L U S I O N</u>	•• 121 - 128
<u>TABLE OF CASES</u>	
<u>BIBLIOGRAPHY</u>	

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I N T R O D U C T I O N

I N T R O D U C T I O N

Now a-days, state activities are dominated by welfare of the people. In turn, state's pay more attention to human rights and social justice. Every civilized state is supposed to provide human beings with such rights, so as, they can live with dignity.

The concern for 'social justice' influenced the society a great extent. Social justice is a cardinal principle of our constitutional system, categorically, incorporated in the preamble of the constitution. Though, the constitution has tried its best to achieve the socio-economic justice through a host of constitutional provisions, yet it remains a distant possibility on account of a variety of reasons. Therefore, the socio-economic justice has been the great concern for all. This aspect has been emphasized by the constitutional jurists and the politician in this country. Mr. K. Subba Rao, former Chief Justice of India, observed:

"social justice must begin with children. Unless tender plant is properly tended and naurished, it has little chance of growing into a strong and useful tree. So, first priority in the scale of social justice shall be given to the welfare of children".¹

1. Subba Rao, "Social Justice and Law" (1974)

That is why, I deliberately chosen the topic "child labour in Lock Industry - An empirical study of Aligarh". As it is clear from the topic, it is concerned with the study of child labour in hazardous work under lock industry at Aligarh. My endeavour is to carry out a work for unlocking those child labour locked in lock industry (hazardous employment).

There are two ways to make use of a resource. First method is to make use of a thing and throw it as a waste. Second method to conserve a resource for future use by making it more useful. So, what do I want? It is the second way to make use of child labour by putting them for full growth under the required circumstances apart from their own socio-economic conditions. This will provide us maximum benefit in the long run.

Much of India's economy is based upon small, cottage industries as family occupation or generally, provide employment to poor masses of the local area along with their children. This is a major factor causing unbridled growth of child labour in unorganised sector. Moreover, in organised sectors, employers take advantage of liberal provisions to regulate child labour instead of total elimination of child labour.

The mode of employing child labour is indirect and not direct. They are brought to the employers by some middleman and they are given work to be done by them in their dwelling houses and not in the premises of place of work. Thus, the application of law is easily evaded by saying, if found by the law enforcing agencies, that the children are not in the employment of employer but are engaged in their own work.

Child labour, particularly in our country is deep rooted, deep forced by socio-economic compulsions encouraged by their parents to supplement their family income. Parents force their children to work from their early child-hood to share the economic burden of their families. Generally, it is well established perception that the more we have children, the more we have money. Child labour is a perrenial feature of developing countries. Child labour in India is caused by such factors as poverty, absence of provision for child education free of cost, large family size of labour class, family occupation, child of migrant workers, neglect by parents, untimely death or desease of parents. However, in some cases children are compelled to work by their own parents. The employers prefer child labour as it costs less and easily kept indiscipline for employers personal benefit.

A study of Bombay Regional Centre, of ICSSR on 'urban child labour' revealed that 88 per cent of child labour is due to poverty, 5 per cent sudden death of parents, 4 per cent due to parents' compulsions and 3 per cent due to neglect of parents.

Problem of child labour is further engraved by ineffective legislation and improper mechanism of implementation of such laws.

To make basic human rights meaningful to the depressed and vulnerable sections of the community and to ensure them social and economic justice is the signature tune of our constitution. To translate the views of the Apex Court into practice, it is necessary to prohibit child employment and provide them a chance to grow to the fullest extent according to their intelligence. It will also fulfil the preambular purpose of dignity of individual and to provide social justice. In Sheela Barse,³ Supreme Court held, "human dignity is the dear value of our Constitution."

Lacs of children are forced to work with swollen fingers, aching lungs and hunched backs suffers from destitute, neglect, abuse and exploitation.⁴ Small children were woken up very early in the morning and then herded into waiting vehicles to be carried away to put long hours of work.⁵ Though, exploitation

2. Bandhua Mukti Morcha, Petitioner v. Union of India and others, Respondents, (AIR 1984 SC 802)

3. Sheela Barse v. State of Maharashtra, (AIR 1983 SC 378)

4. Times of India, New Delhi (June 22, 1993 & July 30, 1993)

5. Times of India, New Delhi (August 11, 1993)

of children is prevalent apart from various statutes prohibiting such treatment is a black spot on the government's inefficiency to implement such laws. For this, Government has been criticized at the floor of Rajya Sabha for its 'indifferent attitude'.⁶

There is a long list of statutes prohibiting child labour or regulating it only for day hours with rest, recreational facilities, medical examination, minimum wages, leave with wages etc. But, what lacks on the part of government is the 'will' power and 'determination'. If the government continued to eliminate child labour at the present rate, Chairperson, South Asian Coalition on child servitude (SACCS), Kailash Satyarthi said that it will not be able to wipe out child labour from this country even in 800 years.⁷

The present work has been spread into five Chapters to study each aspect of child labour in hazardous employment and means to eliminate this socio-economic evil.

Chapter I makes an elaborate study of concept of child labour, Historical development of Child labour, and role of international agencies such as ILO and UNICEF.

6. Times of India, New Delhi (August 17, 1993).

7. Hindustan Times, New Delhi (July 29, 1993)

Chapter II goes deep into the root of child labour, so as to find out - what are the factors responsible for the growth of child labour.

Chapter III makes an analysis of various statutes prohibiting or regulating child labour - relevant provisions, their enforceability, shortcomings in the statutes and need for comprehensive legislation.

Chapter IV deals with constitutional provisions prohibiting or regulating child labour. Blatant violation of these provisions is under study along with judicial trend as appeared from the decisions of the Apex Court.

In Chapter V, survey report on child labour in hazardous employment under lock industry at Aligarh has been discussed under Factories Act, Shops and Establishment Act, Employment of Children Act and Child Labour Act.

Last but not the least, is the culmination of the long tiresome journey in its conclusive part with suggestions.

CHAPTER - I

CONCEPT, HISTORY AND DEVELOPMENT OF CHILD LABOUR

1. Concept of child labour
2. Historical Resume
3. Development of child labour in India
4. I.L.O. in pursuit of child labour

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CONCEPT, HISTORY AND DEVELOPMENT OF CHILD LABOUR

(1) Concept of Child Labour:

A generally valid definition of child labour is presently not available either in national or International context. Any definition turns upon precise meanings we attach two components of the terms "child labour" i.e. 'child' in terms of his chronological age and 'labour' in terms of its nature, quantum and income generation capacity. Child labour, however, can broadly be defined as that segment of the child population which participates in work either paid or unpaid.¹

'Child labour' means the employment of children under a specified legal age² and it is use of the children to work in factories or other places of employment.³ But the term child labour is more meaningfully defined by the United States Department of labour as the employment of boys and girls when they are too young to work for hire, or when they are

1. Encyclopaedia of social work in India; vol.1, P.78

2. The New Encyclopaedia Britannica Micropaedia; vol.II, 15th Edn. (1978), P.329

3. The world Book Encyclopaedia, vol.3 (1983), P.363.

employed at jobs unsuitable or unsafe for children of their ages or under conditions injurious to their welfare. It is any employment that robs children of their rightful heritage of the chance for healthful development, full educational opportunities and necessary playtime,⁴ child labour is, therefore the work done by a child at unfit age in contravention to the age limit prescribed under the existing statutory provision.⁵ According to child labour (Prohibition and Regulation) Act, 1986 the definition of 'Child' means a person who has not completed his fourteenth years of age. But before, 1986 Act, minimum age of a child was 15 years under the employment of Children Act, 1938.

V.V. Giri has distinguished two senses of term 'child labour'.

The term "child labour" is commonly interpreted in two different ways. First on economic practice and secondly, as a social evil. In the first context it signifies employment of children in gainful occupations with a view to adding to the labour income of the family. . It is second context

4. The Encyclopaedia American (1963), P. 461

5. Under section 2(c) of the Factories Act, 1948, child means a person who has not completed 15th years of age under section 2(ii) of the child labour (Regulation & Prohibition) Act 1986. Child means who has not completed his 14 years of age. This is existing statutory age limit of child.

that the term child labour is now more generally used, in assessing the nature and extent of the social evil. It is necessary to take into account the character of the jobs in which the children are engaged. The dangers to which they are exposed and the opportunities of development which they have been denied.

Government of India constituted Gurupadaswamy Committee in 1979 to prohibit and regulate child labour. The report making distinction between child labour and child exploitation runs as follows:

However, we must make a distinction between child labour and exploitation of child labour. Both are a problems though of different orders. Child labour as distinguished from work experience has mostly negative attributes. It can now be asserted on scientific ground that work as direct fulfilment of child's nature abilities and creative potentialities is always conducive to his healthy growth. But work when taken up as means for the fulfilment of some other needs, become ensolving in character and deleterious in its impact. Labour is work of taller type irrespective of the degree of strain or exploitation involve in it, work by its very nature is enriching the basic attributes of work are purpose plan and freedom, when they are

conspicuously absent, work become a labour. Labour in care of child, especially is harmful because the energy that should have been expended on the nurturing of talent powers is consumed for purpose of bare survival child labour assumes the character of a social problem in as much as it hinders, arrests or distorts the natural growth processes and prevents the child from attaining his full-blown manhood when the business of wage earning or of participation in self or family support conflicts directly or indirectly with the business of growth and education, the result is child labour. The function of work in childhood is primarily developmental and not economic childrens work then as social good in direct antithesis of child labour as a social evil.

The child labour is not a new phenomenon to our age. It is social problem, the world over. There have been so many changes in the recent past in the values and attitudes of the legitimising groups of society vis-a vis child labour because of some new developments in the pre-industrial agricultural society of India. Children worked as assistants and learners in hereditarily determined family occupations under the benign supervision of adult family members. The social scenario, however changed radically with the advent of Industrialisation and urbanisation. Under the impact of newly generated centrifugal and

centuries poor migrating to urban centuries in search of livelihood. The child used to work as an individual person either under an employer or independently. This work endangered his physical health, and mental growth and led to his exploitation, the protection and welfare for those children. Therefore, become an issue of paramount social significance and free India provided in its constitution for several guards to protect and promote the interests of the child. These constitutional provision established the normative superiority of welfare considerations over the economic and revealed in bold relief the antagonism between child labour and child development.

The highlighting evil aspect of child labour is the recent advance in various sciences having a bearing on the child, today, scientific knowledge has revolutionalised our outlook on the care of child and his development imperative, diffusion of this knowledge has created a new awareness in the major institutions of society as to relationship. The child should have with 'milieu' his need objects and his work etc.

(2) Historical Resume:

The child labour in ancient India, it can be said that it existed in the form of child slaves. The children

of less than 8 years were purchased as slaves like articles of trade for doing low and dishonourable work. Children of slaves took birth as slaves lived and died as slaves unless the master liked to release them from slavery.

Kautilya, pointed out that the trade of children as slaves was not prohibited in Mlechchhos because they were backward and uncivilised on the other hand, Arya child was prohibited to become a slave.

If an Arya child was sold or pledged with some one, then all the parties to the contract including the witnesses were liable to be punished the degree of punishment depended upon the status of parties; 'Kautilya said,

It was realised by Kautilya that children were not physically fit to do dishonourable work. Taking such work from children was considered by Kautilya against humanity and shameful. Therefore prohibited the purchase and sale of slave children below 8 years.

Moreover, it has been also the tradition from the very earliest time that children were to perform some work both in homes and in fields. In the olden days, the children of tender age performed toilsome work along with adult agricultural and industrial worker. In the medieval period children were put as trainees under their parents to learn

their crafts. This tradition is also noticed now-a-days. Even children do the agriculture or other form of work to help their parents from the very beginning. In this way, employment of children continued to be a problem since the early of Industrialisation.

The Whitly Commission stated:

"....In many cities large number of young boys are employed for long hours and discipline in strict indeed. There is a reason to believe that corporal punishment and other disciplinary measures responsible. Kind are sometime resorted to in case of smaller children - workers as young as five years of age may be founded in some of these places working without adequate meal intervals or weekly rest days and 10 or 12 hours daily for sums as low as 2 annas in the case of those of tenderest age.⁷

Hence in every country the children were employed in large numbers in factories who were paid low wages were subjected to excessive hours of work and were made to work under the terrible condition. The condition of children in England in the beginning of Industrial revolution, were miserable, After establishment of a large number of Industries, factory owners soon found that a good deal of work

7. Report of the Royal Commission on Labour; P.96,97,-
1969.

in their establishments could be performed by women and children whose labour was cheaper than that of men. The poor law of 1601 in England , had ordered that a pauper children.. should be apprentical to a trade and it become common for employers to visit work houses and accept batches of pauper children as apprentices. These children were taken to factory where they were kept at work-very long hours from 12 to 16 per day. They were not given rest even on Sundays when it was common practice to clean the machinery fire was burned blow and many used to die of suffocation. They were fed, clothed and housed by the factory owners saw in system of child labour nothing but a means of profit, the children were paid according to the work done by them.

Therefore, children were flogged, fettered and tortured and in general subject, to repression and cruelty which exceeded that occasionally practiced in the same period in slow rate of America. The truth about the conditions of child labour in factories was not realised by the general public and even when knowledge of its spread people were not shocked at the idea of children of five, six or seven doing factory work. The notion that the child of working classes should not begin to earn his living until he reaches the age of 14 or 15 and that until then his time should be :

divided between study and recreation, is of quite modern growth, child labour also existed before the factory system was introduced and children of 3 or 4 years were expected to assist in simple processes of textile work in cottage industries. Hence, the employment of children in factories was not considered in itself as an evil at all.

In India also, with industrialisation, a large number of children came to be employed in factories and their employments still continue in certain industries inspite of certain legal provisions as regards their age, hours of work etc. while in England with the passage of legal laws, employment of children has become a thing of past. In case of India as remarked by the labour investigation committee "one black spot of labour condition in India is this illegal employment of children in certain industries and it was also found by labour investigations committee, 1946 that legislative measures relating to child Employment with little success in ameliorating conditions of work of child labour". It observed:

"The important fact that has emerged from investigation is that in various industries mainly smaller industries the prohibition of employment of children is disregarded quite openly and owing to the inadequacy of the inspection staff it has become difficult to enforce the relevent provision of the law".⁸

8. Labour Investigation Committee, Main Report; 1946, P.85

Fortunately, government sympathetically considered the problem of child labour and not only adopted legislative measures. Therefore, in latter years, the situation regarding child labour comparatively eased in factories, industries. It present to give anxiety in the unorganised smallindustries it is clear from the report of an inquiry conducted on the subject by the labour Bureau in early fifties to the following conclusion:

At present, therefore in factories and industries child labour is not a serious problem. It is however doubtful if statistics compiled from returns under the factory Act till the whole story regarding child labour. For it is well within the experience of factory inspector as well as other officers engaged on field enquiries but no sooner they make their appearance on scene then quite a large number of children run away from the factories premises. These are often children below the minimum age for employment.⁹

It was also observed by labour Bureau study and showed that in small industries and cottage industries such as much manufacturer cashewent processing, bidi making, carpet weaving employment of under age children either on certified or having false age certificate continue. The

9. Child labour in India, Ministry of labour, Labour Bureau, 1954, P. 8

actual hours of work were found to be in excess of the prescribed working hours under different enactments. In Cottage industries children were required to work. The working condition of Children in the bidi and glass industries continued to remain deplorable. However, a redeeming feature reported by the study was that children were assigned comparatively light work where employed in plantation factories and cottage and small scale industries.

(3) Development of Child labour in India:

The History of India shows that work by children is a part of socialisation process and a means of transmitting skill from parent to child. Overwhelming majority of children were assisting and work with their parents at home and on the farm. India is a not only a principally agricultural country but also a land of ennumerable small trade industries and trades and crafts without machinery or power employing a larger number of workers. Among these unregulated occupations such as beedi making, tanning carpet manufacture, wool cleaning, mica manufacture of bangles are some of important occupations where considerable number of children are working. Besides learning skills from parents, because of cronic poverty several poor children are also working in various hazardous occupations which are injurious to their life

and growth.

In India with the advent of Industrilisation, a large number of children were employed in factories and their employment still continues in several industries inspite of certain legal provision are being made imposing restrictions on their age, hours of work etc. Starting from last century till now millions together child workers are employed in many hazardous occupations and their working conditions intolerably loathsome and undesirably in human. This fact was also observed by the Royal Commission on labour long back. Regarding beedi industries the commission observed; " every type of the building used but small workshops preponderate and it is here that gravest problems mainly arise and many of these places crowded so thickly on the ground that there is barely room to squeez between them". The lack of ventilation impairs health and the lack of height gives the child labour a stoop- small children even as young as 5 to 7 years' age work from 10 to 12 hours.¹⁰ In the recent years the growth of child labour has increased to a considerable extent. According to the 1971 census 4.66 per cent of the child population in India consisted of working children. In absolute numbers, the

10. Quoted by C.B. Mamoria, Industrial Labour and Industrial Relations in India, vol. 1 Ist, Edn., P.132

1971 census put the figure at 10.7 million working children. On the basis of National Sample Survey 27th round (1972-73) the number of working children as on March, 1973 in the age group of 5-14 years, may be estimated at 16.3 million and based on the 32 round at 16.25 million in 1st March, 1978 (14.68 million rural and 1.57 million urban). According to 1981 census the figure has gone to 11.1., million working children. As estimated by the planing commission on 1st March, 1983, there would be 15.70 million children labours, (14.03 rural and 1.67 urban) in the age group of 10-14 years and 17.36 million in the age group of 5-14 years'. The National Sample Survey organisation estimates the number at 17.58 million in 1985. None of the official estimates included child workers in the unorganised sector and, therefore, are obviously gross under estimates. Estimates from various non-governmental sources as to the actual number working children range from 44 million to 100 million.

The employment of children in industrial or agricultural or in any other hazardous work to an extent is determined to their health, education, and general well-being. But this practice is rampant in India at present. Working children are found in all sectors of employment in the country both in organised and unorganised. There

are millions of unfortunate children who work in farms and fields hotels and restaurants, building stone crushing operations and as vendors, newspaper seller, shoe shine boys or just as beggars. In recent years, the growth of child labour has increased much in various hazardous occupations. According to the union minister of State for Labour Mr. P.A. Sangma, at present in our country million of children are working in various segments of the economy and he remarked that "the beedi industry especially in Karnataka. Andhra Pradesh and Tamil Nadu. The match industry in Sivakasi and its environs. The carpet industry in Uttar Pradesh the glass factory in Firozabad the Diamond cutting and jari industry in Gujarat are all the dubious " benefactors" ¹¹ of child labour in the country".

At present in India, children are working in several hazardous occupations in the most unhealthy and inhuman conditions for meagre payments for longer hours. For example conditions of children working in Kanpur glass industries can be considered. There are more than 200 small factories are mostly unorganised and do not maintain any work register. ¹² Children work in small factories

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11. Special Correspondent "Captive labour, culture of compromise". The Hindu (Hyd.,Edn.) Sunday, May 4, 1986, P. 17
 12. Lucknow Staff reporter, Child workers in Kanpur, blowing own lives out, The Hindu, (Hyd.,Edn.) Sept., 26, 1986, P. 19.

which manufacture bulbs at an age when others play hide and seek and busily read their newly bought comics, children working in a glass factory prematured adults. Their childhood is mortgaged for a sum could hardly buy them a couple of chocholets at a time.¹³

Five Year Plans:

The Five Year Plans represents a significant reflection of the Government's Policy towards children although one may concede that there is usually a wide gap between the plans and their implementation. Policies important direct implication for the well being of children are generally included in other sectors then social welfare viz., health nutrition education welfare backward class etc. The fact that child welfare is contained in the social welfare sector has important implication since social welfare programmes have been concerned with services for welfare also tends to be viewed as being largely oriented towards reliefs and rehabilitation. The imperative need to view investment in children essentially as part get barred in our plans.

The First Five Year Plan (1951-56) acknowledge the need to greater consideration to children and recognised malnutrition as a major causes for their ill health and re-tradition. In the light of scarcity of Government resources,

13. Lucknow Staff reporter, Child Workers in Kanpur; blowing own lives out, the Hindu, (Hyd. Edn.) Sept. 26, 1986, P. 19

the establishment of Central social welfare Board (CSWB) in 1953 in order to coordinate and strengthen voluntary efforts provided a significant impetus for mobilising serious for children and women.

The second five year plan (1956-61) attempted to coordinate welfare extension project with similar activities initiated by community developments blocks, thus emphasising the role of local bodies and communities in promoting services for children. The provision of plan free and compulsory education to all children between 6 and 14 years. The physically and mentally handicapped children received special attention in Central and State plans.

The third Five Year Plan (1961-66) attempted to implement a programme significant from the point of view of evolution of a concept of inter sectoral convergence of services for children in defined geographical area namely. These were to be launched at least one in each state to bring about complete coordination in services provided by medical and public health education, social welfare and other agencies. Another crucial aspect of third plan was the importance given to the training of child workers, the creation of new cadre of Balsevikas and establishment of a number of Balsevikas training centres.

The Fourth Five Year Plan (1969-74) emphasized the need to accord a higher priority for a care of destitute children services for neglected children were to be augmented by extending to coverage of Children Acts to wider areas.

The Fifth Five Year Plan (1974-79) attempted to give a new rôle to social welfare by shifting the previous emphasis on curative and rehabilitative services to the adoption of a preventive and development access. The Govt., would so adopt a strategy which would enhance the capacity of families groups and communities to cope more effectively with problems and needs arising from social change and FCW was replaced by new programme, namely the integrated child development services, to ensure health development of children, particularly those below 6 years of age under developed areas through a package of services supplementary nutrition, immunization, health check up, referral services nonformal pre-school education, and nutrition and health education of mothers constituted the package which was to be coordinated with functional literacy for women, Family welfare services and provision of safe drinking water to the extent possible.

The Sixth Five Year Plan (1980-85) in the field of child welfare, integrated child development services were expanded.

The sixth plan target of 600 projects was later raised to 1,000 emphasis was on the development of a¹⁴ monitoring system.

The Seventh Five Year Plan (1985-90) volume II . The segment of labour market which deserves immediate attention is child labour since it is not feasible to eradicate the problem of child labour at the present stage of economic development, attention has to be focussed on making the working condition of child labour better and more acceptable socially. Improved legislation coupled with better enforcement machinery are called for. Association of voluntary organisations and agencies with the tasks of providing child worker with health care, nutrition and education will be desirable. The ultimate goal of abolition of child labour can only be achieved when there is sufficient improvement in the conditions of the families whose children are compelled to work.

The Eighth Five Year Plan (1992-93) Volume II & 5.3 A National Child Labour Programme has been taken up to make effective intervention to prevent exploitation of child labour in the unorganised sector. Nine child labour projects with the main aim of suitable rehabilitation of the children

14. Government of India; Sixth Five Year Plan (1980-85) Planning Commission, 1981.

withdrawn from employment by providing then welfare inputs have been launched. Programmes for women labour include assistance to voluntary organisations for taking up action- oriented projects, studies relating to women labour, organisation of child care centres for the benefits of women workers, welfare projects for workers in the construction industry and strengthening of the enforcement of the provisions of the equal remuneration
15
Act.

The National Policy for Children

The National policy statement adopted in 1974 states "It shall be the policy of state to provide adequate services to children both before and after birth and through the period of growth, to ensure their full physical, mental, and social development." This is a well-come recognition of state importance of safeguarding children through all periods of growth prenatal and post natal - thus including care of pregnant women to nursing mother. The fifteen point programme takes a comprehensive and total view of the needs of children, both normal as well as those suffering from various types of handicaps, physical, mental and social and urges provision of services to promote their development into socially useful and productive members of society.

15. Govt.; of India; Eighth Five Year Plan (1992-1993), Vol. II Planing Commission, 1991.

(4) I.L.O. in pursuit of Child Labour:

The abolition of child labour are one of aims for which the International labour organisation was created, and the promotion of the well being of children in the fields within the I.L.O's competence have been the focal point of much of the organisation's work throughout its existence. A major part of that work has been the adoption by the International labour conference of a series of conventions, recommendations and resolutions dealing with the employment of Children.

16

International labour organisation:

The earliest concern of any world body for the protection of children was of the International labour organisation (hereinafter ILO). The I.L.O. has been playing an important role in the process of gradual elimination of child labour and to protect child from industrial exploitation. The programmes of I.L.O. focus their attention on five main issues,

- (1) Prohibiting child labour, (ii) Protecting child labour at work, (iii) attacking the basic causes of child labour, (iv) helping children to adopt to future work and (v) protecting the children of working mothers. A series of Conventions and Recommendations have been formulated to

regulate and limit and gradually abolish child labour. Till now, 18 Conventions and 16 Recommendations have been adopted by the ILO in respect of working children all over the world. The very first ILO Conference adopted a convention which fixed the minimum age at 14 years for the industrial employment of children. The convention No. 138, replaced all the previous relevant conventions. Its purpose was to establish minimum standards valid for all sectors of economic activity, with a view to achieve total abolition of child labour below 14 years. To make this convention apply its principles easily, Recommendation No.146 was adopted, It advocates a firm national commitment to full employment, the progressive extension of socio-economic measures to alleviate poverty and ensure high living standards to keep children away from economic activity, the development and progressive extension of social security and Family Welfare measures aimed at ensuring child maintenance, including children's allowance the development and progressive extension to adequate facilities for education and appropriate vocational training for children and young persons the development and progressive extension of appropriate facilities for the protection and welfare of children and young persons including employed young persons and for the promotion of their development adoption of

special measures of migrant children and young persons who do not live with their families, introduction of compulsory full time attendance at school till the age of admission to employment. According to International Labour Organisation, India has the largest number of working children in the world. In fact, it is difficult to estimate the real extent of child labour in India due to predominance of informal and unorganised nature of the labour market and also due to lack of precise and uniform definition of child labour. However, the national sample survey organisation estimated the number of working children in India at 17.58 million in 1985. But the estimates from various non-governmental sources as to the actual number of working children is about 100 millions. According to Asian labour monitor, 20 per cent of the Gross National Product of India is contributed by the child labour. The available statistical data indicates that over 90 per cent of the working children are to be found employed in agriculture and related occupations in vallages. The remaining 10 per cent are engage in cities and towns in almost every occupations. There is virtually no sector in which a child is not employed many of these activities are dangerous to their physical as well as mental growth.

India has ratified 6 convention out of 18 conventions adopted by the International Labour Organisation.

The United Nations the successor of the League of Nations is also taking steps to eradicate child labour. In fact, international recognition of the rights of children began with the League of Nations adoption of the Geneva declaration of the rights of the child in 1924. In 1948 the United Nation General Assembly approved "A Universal Declaration of the Human Rights" in which the rights of children were implicitly included. The United Nation Declaration of the Rights of the child was added in 1959. The year 1979 was designated as the International Year of the child to commensurate the 20th Anniversary of that Declaration (Ibid Note). The United Nation General Assembly on 21st Nov. 1989 marks a watershed in history of the long drawn out battle for the restoration of the basic rights of children.¹⁷ The aim of this convention is to define more clearly and to harmonise Human Rights Standards for children, to fill in the many gaps identified in current provisions and to set the result of this in depth reassessment exercise within the context of a single binding international instrument.

17. Child Labour (Prohibition & Regulation) Act, 1986
Labour & Industrial Cases, Volume, 24 , Part I
1991, Page 120 by Miss Y. Vishnupriya.

CHAPTER - II

FACTORS RESPONSIBLE FOR CHILD LABOUR

1. Chronic Poverty
2. Cheap labour
3. Absence of Provision for Compulsory and free education upto 14 years of age
4. Large Family
5. Family Occupation
6. Child of Migrant Workers
7. Ineffective Legislation
8. Other reasons

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FACTORS RESPONSIBLE FOR CHILD LABOUR

Child labour is a two fold problem. On the one hand , it is the outcome of parents or children's own compulsion due to poverty, lack of education, large family size etc. On the other hand, child labour is promoted by employers as it costs less them and they can be kept under control easily and more work may be taken from them.

So, first it is fruitful to analyse the factors for the growth of child labour from the parents or childrens side. Large family size with low income, wide spread unemployment and under-employment among the adult poor strata of the population, inter alia, due to sharp growth of population are the major reasons responsible for the growth of this evil practice. Diverting the child from work means deperivation of income to the poor parents and an additional expenditure on education, however small; so the workers do not find it useful to send their children to school. Further there are some factors due to which child labour is also favoured by the

employers. Children are more amenable to discipline and control, employers cantake more work from children. Besides, there is no problem of unionism among children. It is very easy to control children their appointment and termination is also riskless.

Thus, it is generally considered that illiteracy, ignorance, low wages, unemployment, low standard of living and social life - all are root causes of child labour. Mr. Madan, Deputy Director, Ministry of Labour stated, "the children are required to seek employment either to augment the income of their family or to have a gainful occupation in the absence of availability of school going facilities at various places.¹

Preference of employers to engage children as they are more amenable to discipline, control and cheaper. Children are mere agile and quick in certain jobs like climbing. There is no organisation among children out of sympathy when they have nothing else to do.

There is international concern for the abolition of child labour. But , in India, Child labour is persisting not as a matter of forced or bonded labour. Apart from this, it is perpetuating due to economic constraints facing the family.

1. Government of India, Child Labour in India, 1954,p.2

It has been officially stated that "child labour is no longer a medium of economic exploitation but is necessitated by economic necessity of the parents and in many cases that of child himself".

Government's role in the abolition or regulation of child labour is also not much appreciating. Government is also in straits of financial crisis due to which it could not fulfil the constitutional dreams enshrined under Articles 38, 39(e) & (f), 41, 43, 45.

Now, it will be worthwhile to analyse each of the causes in detail so that, the real position may emanate from it for the eradication of child labour.

(1) Chronic Poverty:

The important causes of child labour is widespread poverty in developing countries. Poverty is an age old common perennial feature is solely responsible for the deep rooted and deep seeded social economic ills including child labour. Poor parents and those who are physically are at a loss to earn the money to spend on their children's bare necessities and requirements of the family search jobs for their children.

If child labour is so positively harmful, who will provide food, clothes and shelter to millions of

children joining the labour force of the nation.

In India, tradition of educational learning outside home was confined to the upper caste strata of society, the privileged classes. Children of the producing classes learn the necessary skills in the family. This is the more important factor of chronic poverty responsible for the prevalence and perpetuation of child labour. Nearly half of India's population subsist below poverty line. In the countryside, the distribution of land is most unequal. The lower 50 per cent house hold only 4 per cent of the land. As many as 27.2 per cent of the rural households are agricultural tenants, 30.4 per cent agricultural labours. Nearly, one-third of the metropolitan population lives in slums and improvised denements. In Madras, 90.8 per cent of the families of working children have an income² below Rs. 500/- per month. In Bombay 78 per cent and in Delhi 88 per cent of such families have a monthly income of Rs. 500/- and below. In these families, the child since his very appearance in this world, is endowed with an economic mission. The child is compelled to shed sweat of his brow to keep the way of hunger and disease away from the door. In some families ,

2. George, K.N. Child labour in the city Madras, paper presented at the National Seminar on Employment of children in India, 1975.

when diseases or other forms of disability upset the delicate balance of the family budget, there may not be any alternative, but to send the child to work. These families cannot sacrifice the smaller gains of the present for the larger gains of the future, as they do not have any surplus to sustain them in poverty and child labour thus always beget each other and tend to reinforce themselves in families and communities. Because of their poverty, parents cannot make any investment in their child's development, they are also reluctant even to support them. They want their children to fend for themselves as early as possible, much better, if they become a source of income to the family. In cases of parental incapacitation, children become the sole bread winners.

The Institute of public opinion conducted a Survey in 1969, according to which 41.2% of Indian population was under the poverty line. Half of these belonged to the muslims, scheduled caste and scheduled tribes. In villages a vast majority of agricultural labour belongs to these communities.

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3. Institute of public opinion, monthly commentry on Indian economic condition, December, 1973.

A seminar on the subject organised by national institute of public cooperation and child development, New Delhi in November 25 & 28, 1975, also came to the same conclusion that millions of families were below the poverty line and they had to deploy their children in the labour market in order to take out a bare necessities.⁴

The report of I.L.O. also indicates that this problem of child labour is not the problem by itself but it is the problem of the maintenance of child and the living wage of adult wage earner so that they should maintain their family at adequate standard.⁵

It was observed in a seminar that parents force their children to make up employment because their own earning power is low. If their incomes are enhanced, they are likely to desist from sending their children to work.⁶

The chronic poverty is the strongest factor for the prevalence and perpetuation of the child labour. Nearly half of the India's population subsists below the poverty line. Poverty and child labour will always beget

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4. National Institute of Public Co-operation and child Development Seminar Recommendation.
 5. Report of I.L.O. quoted in the book Needs of Children, published by UNICEF, P. 144.
 6. Recommendations of seminar on employment, of Children organised by NIPC C.D.N., Delhi in Nov, 1975.

each other, and tend to reinforce each other in families
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 and communities.

(2) Cheap Labour:

Mostly employers think that a lot of work can be done by the children in their establishment and this labour of children is very cheap labour in comparison to that of adult, children have less developed ego and status consciousness. They are also afflicted by feeling of guilt and shame, so this child labour is the means of good profit. The children can be put on status even demanding jobs, without much difficulty, children are more active or agile and quick and feels worn-out feels tired in certain tasks. They are also better candidates for tasks of a helper in a grocer's shop or an auto-garage. The employers find children more amenable to discipline and control. They can be coaxed, admonished, pulled up and punished for default without jeopardising relation. Child labour is also cheapen to employ as they may do almost the same amount of work as an adult but they costless in terms of wages and maintenance. Child worker are a greater source of profit for they generate a larger surplus value for the employer. The adoptive abilities of

children are much superior to those of adults. They can be socialised by the employer according to his taste or demands of the situation. All this explains why children are liked more for jobs such as those of domestic servants and restaurant workers. In this country children at a very young age do domestic work because these children are very cheap. The middle class families which have lower incomes especially keep little boys and girls as domestic servants from 8 to 14 age group which is the age of fun and frolic at school. They get little pocket money and food by their masters.

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Jerome, Davis: Stated that beside the compulsion of poverty within the family, is the stimulus of the manufacturer who desires to secure cheap labour and more profit. Child labour exist not because children are more able workers but because they can be had for less money. Children are employed by small concerns and large corporations.

The child worker are not organised on lines of trade unions which can militantly fight for their cause. As, such children have to submit silently to the excesses visited on them by their masters. A child worker at best is a lonely worker who can afford no show down with his employer. Not only employers view child workers as innocuous but also innocent. Children in distress have a

greater appeal to their human essence than the adult. Providing succour to a destitute or forsaken child is considered a moral act of highest merit even the picture of a starving emaciated child causes tremors in the human soul, child, therefore has a distinct advantage over the adult, as far as employers appreciation of his plight is concerned. The National Commission on labour (1969) found that it was the feeling of sympathy rather than the desire to exploit which weighed with some children's employers. The Committee recognise that a multiple policy approach is necessary in dealing with the problems of working children. They have to be seen distinctly in the categories of wage earning employment; as unpaid family workers; as apprentices in traditional crafts, and as working and schooling. Each category has its own specific problems and which the State and the society will need to fulfil.

(3) Absence of provision for Compulsory and free education upto 14 years of age:

Absence of provision for compulsory education is main causes of child labour because mostly children are not well off to find educational facilities at various places due to lack of sound economy as well as educational scheme of government.

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9. Madan, G.S. Review of Legal Provision relating to facilities for working condition of employed children- The impact on their health, education on development.

The fact is indirectly admitted by national Commission in 1969, when it states in its report, " The gradual reduction in the employment of child labour since independence is due partly to the expansion of educational facilities by the States and also to relatively better enforcement of statutory provisions relating to child labour. "¹⁰

A view was also expressed by Prof. Smt. N. Acharji, Xavier labour Relation institute, Jamshedpur as, Books and stationary are expensive will the parent choose between food and clothing, the primary needs or purchase books for the children? For scheduled castes and tribes even these may be available free of cost. But for all poor families the question posed is immediate supplementary income and touse the children as sources rather then pest-pone this prospect to an uncertain date, when he will pass his matric and may or may not get a job in an economy when millions are still unemployed, thus psychologically¹¹ the path of least resistance is adopted by them.

Child labour and non-schooling of children have a significant linkageto the poorer sections of population.

10. Report of National Commission on Labour 1969, P. 386

11. Prof. Smt. Acharji, Child labour in India (unpublished) read in Seminar organised by NIPCCD in Nov. 1975.

Many children are forced to stay at home because their parents cannot afford the prescribed minimal of uniform, books and stationery etc. Schooling of children is eschewed by them also because it not only touches their pockets but deprives them of the income that accrues from child labour stagnation and wastage, comparatively low in lower classes but high in higher grades, lead poor children to drop out of the school system. A child is willingly sent to school between the ages 6 and 9 because at this stage, he is more a nuisance than an assistance at home. But as he crosses this age limit the position is reversed. The child now can work at home or earn something outside. This is especially true of girls who have to assist the over-worked mothers at home. As many as 73 per cent of boys and 80 per cent of girls drop out through primary and middle school education. It is found that the drop out is much higher in slum areas, drought prone village and among marginal school.¹² In rural areas, the clash between timings and periodicity of the school system and those of agricultural operations often endanger amongst the poor school going children tendencies for temporary withdrawal or permanent drop out especially during the times of sowing and harvesting. In areas where green

12. Perspective on child in India :

Central Institute of Research and training in Public Cooperation, 1975.

revolution is becoming a stabilised reality, wages of agricultural labourers have substantially gone up, tempted by prosperous wage, earnings labour families, local as well as migrant, have pressed into service their child population also. This is adversely affecting school enrolment and attendance in those as well as the labour supplying areas. Spectre of unemployment may be another strong deterrent and disincentive to the weaker sections to putting their children in the school. When those having a resource net-work cannot secure a white -collar, Job, they argue, how can their poor children? Increasing volume of unemployment among the educated youth, thus undermines the faith of the poor in the efficacy and pay off of education. 12.7 million persons were on the line registers of employment exchanges at the end of December, 1978. The number of educated job-seekers was estimated at nearly 3 million.

(4) Large Family:

In India, majority of people are illeterate so maximum people are not aware about the birth control facilities like family planning and others. The families which are large and have less income can not have happy notion in their mind. As a result, they cannot give sheltered childhood to their children. If a family is limited

and well planned there will be no question of sending their children to the labour market and the children can be carefully educated. But impoverished and illiterate parents think just contrary to this, they think every child is born with a hand to feed himself/herself.

The size of the population of children between 4 and 5 years obviously plays a dominant role in the supply of child labour. To gain insight into the child labour participation behaviour, it is essential to distinguish boys from girls both in the rural and urban set up. In rural India, boys comprised, 28.3 per cent of all males and girls 27.3 per cent of females. In urban areas on the contrary boys comprised 25.3 per cent of males and girls 27.0 per cent of females. In 1961, of the entire child population, 82 per cent was in rural areas and 18 per cent in urban areas with the tempo of urbanization, the rural share reduced to 81 per cent while urban share rose to 19 per cent in 1971. The 1971 census reveal that boys in rural areas comprised 42 per cent and in urban areas only 10 per cent, whereas girls 39 per cent in villages and 9 per cent in towns of the entire child population of India. The country as a whole displayed 33 per cent growth rate for boys 43 per cent for girls and a decennial average of 33 per cent for the entire child population.

13. Chakraverti, Ashish K, - Child labour and transition economy- The Indian Scene-paper presented at Conference on Child in India, New Delhi, March 22-24, 1979.

(5) Family Occupation:

In India, tradition of home based or family occupation. It was only among the upper classes that formal education outside the home was encouraged. Most of children were expected to learn their traditional craft for in case of girl children, to share the responsibilities. This was considered necessary that one was born very little for improving ones position in the society.

In India, tradition of educational learning outside home was confined to the upper caste strata of society, the privileged classes. Children of the producing classes learnt the necessary skill and workways in the family. Formal education had little relevance to them. This tradition continues even today among some segments of the have - nots because of their fossilised aspirations. They do not receive education per se and the present curriculum as an image builder or status fomentor. Their children are inducted and indoctrinated in the culture of work from the very beginning. Step by step these children get steeped in the ethos of labour having finally lost all opportunities for a pull back.

Stronger than tradition is the factor of chronic poverty responsible for the prevalence and perpetuation of child labour nearly half of India's population subsist below poverty line.

(6) Child Of Migrant Workers:

With the progressive mechanisation of agriculture, a large number of farm hands are being squeezed out of this sector and force to migrate to cities. Thus, augmenting the strength of child labour in urban centres. In the context of a consistently fast growing population the small and declining size of agricultural land holdings is basic to the process of out migration. Migration has a disturbing influence of educational attainment of children. Among all the migrant childrent in the cities, the plight of the children of migrant construction workers is perhaps the most miserable as they move from site to site in search of jobs. Data regarding child migrant workers are directly in 1971 census. According to 1961 census, out of about 13.4 million child population in the cities, about 3 million (22.8 per cent) were recorded as migrants corresponding to every 100 migrants aged 15 and above enumerated in the cities, there were 22 child migrants. Out of 3 million child migrants, about 98 thousand (32 per cent) were workers. Sex-wise work participation rate was 4.8 per cent for males and 1.4 per cent for females.

Field studies also show that migrant conditions encourage child employment . In Bombay 80.5 per cent of the

14. Khandekar , Mandakini - A report on the situation of children and youth in Greater Bombay, Tata Institute of Social Sciences, Bombay, 1970.

working children were found to be migrants. Another study found that out of 287 slum families of working children in Bombay, only 10 per cent considered themselves as native.¹⁵

(7) Ineffective Legislations:

The Central Government as well as State Governments have passed a number of legislations concerning about the child labour and welfare measures or schemes to remove the child workers from dangers occupations in India, but not enforced in proper or regular way and not taken stern steps against child labour as to what are the reasons of the child labour in India and what measures are required to remove this evil. The labour inspectors and machinery concerning the child labour do not follow the provisions of the Acts and welfare legislative measure in the favour of child labour. Even labour Inspector, other concerning officers themselves are cause of child labour because they take some as a gratification bribery from the owners, occupiers, employers of hazardous employments and in own interest ignore exploitation of the child labour.

15. George, K.N. Child Labour in City of Madras
Ibid.

(8) Other reasons:

To the above causes of child labour, there are also other significant reasons for child labour. The slow process of protective labour legislation which can not even cover the agriculture and small scale industries the Inspecting machinery which is provided by the State Government are inadequate to check up the child labour. It does not apply to craftsmanship because it is done at home with little strength and skill. The labour investigation committee in 1946 and seminar on the subject in November 1975 reported that existing machinery is inadequate and ineffective.

The situation in respect of child labour in India is still one of "continuing drift". Though there is little evidence of children at work in the organised sector of industry and in certain pockets in the country, the overall position is as had been observed by the Whitley Commission nearly 50 year ago. Bulk of the children continue to be employed in the rural environment While most of them work without wages, there is an increasing number amongst them of children employed for wages and also of many working on jobs which are hazardous, these children take to employment in smaller establishments in cities under varying exploitative condition. The Regulation by

law of employment of children covers only a few of these occupations and ironically even where regulation has been sought, the enforcement is extremely half-hearted.

Evaluation is made from time to time in respect of jobs in which children are employed and certain purposeful policy decisions are taken to meet the deficiencies, the existing situation is likely to undergo some qualitative as well as quantitative change if something concrete is done to remove these factors responsible for the growth and continuation of child labour.

CHAPTER - III

VARIOUS STATUTES PROHIBITING OR REGULATING

CHILD LABOUR

1. The Factories Act, 1948
2. The Children (Pledging of Labour) Act, 1933
3. The employment of Children Act, 1938
4. The minimum Wages Act, 1948-Rules made there
under by Central Government
5. The Plantation Act, 1951
6. The Mines Act, 1952
7. The Merchant Shipping Act, 1958
8. The Motor Transport Workers Act, 1961
9. The Apprentices Act, 1961
10. The Atomic Energy Act, 1962
11. The Beedi and Cigar Workers (Conditions of
Employment) Act, 1966
12. Shops and Establishments Acts, in various States
13. Child Labour (prohibition & Regulation) Act, 1986
 - (i) Recommendation of Government, Committees
 - (ii) Salient feature of the child labour
(Prohibition & Regulation) Act, 1986
 - (iii) Problems of implementation of the Act
 - (iv) Short Coming of the Act

VARIOUS STATUTES PROHIBITING OR REGULATING CHILD LABOUR

There was growing concern for child labour due to ill effects upon their development, health etc., especially in the post World War era. In earlier days, League of Nations embarked upon child labour. Later on, this issue was taken up by U.N.O.

Moreover, in our country, welfare government had taken the cause of child labour Government successfully enacted various pieces of welfare legislation to prohibit and regulate child labour in various types of work.

Although the majority are working in the agricultural sector, they are found working in construction sites, match-making units beedi rolling, carpet weaving, lock manufacturing, small and medium size textile industries, slate and pencil manufacturing, diamond cutting, gem polishing, hotels and restaurants automobile garages, as domestic help, rag picking, hawking and other such activities.

Most of the Acts prohibiting and regulating child labour had been discussed below in detail:

From time to time, amendments have been made in most of the above statute, because of the progressive out look of the Government for improving the conditions of the children which regulate the working conditions of child workers and mitigate adverse effect of employment on their health, education and training etc. are as follows:

(1) The Factories Act, 1948 (Amended in 1949,1950,1955) :

It extends to whole of India except the State of Jammu and Kashmir¹. It applies to establishments employing ten or more workers with power or 20 or more worker without power². A 'child' under the Act, is defined as a person who has not completed the fifteen year of age³. A adolescent⁴ means a person who completed fifteen years of age but has not completed eighteenth years of age⁵ thus "young persons" may be divided into three catagories.

No young person shall work at any machine to which this section applies, unless he has been fully instructed as to danger arising in connection with the machine and the precautions to be observed and -⁶

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1. The Factories Act,1948,Section 1(2)
 2. Ibid, section 2(M)
 3. Ibid.,section 2(C)
 4. Ibid.,section 2(B)
 5. Ibid.,section 2(d)
 6. Ibid.,section 23(1)

- (A) Has received sufficient training in work at machine?
- (B) Is under adequate supervision by a person who has through knowledge and experience of the machine?

Sub-section I- such a machines may be prescribed by the State Government being machine which its opinion are of such dangerous character that young person ought not to work at them unless the forgoing requirements are complied with.⁷

The owners of dangerous machinery who by their foreman - employ a young man about it unequitted with its nature and the use are bound to take due care take such a person is duly instructed therein and if they either neglect this or if express direction are given by foreman to use the machinery in a manner which must lead to danger of which the young person is not likely to be fully aware they are liable to any injury sustained by such person in the use of machinery in that manner.⁸

The Section of U.K. Act impose no duty on the young person; even if it a breach of such a duty did not disentitle him from claiming against the employer who was

7. Ibid., Section 23(2)

8. Greez v. Frost; (1863) 3 F and F 622

also in breach of his statutory duty under the section.⁹

No women or child shall be employed in any part of the factory in pressing cotton in which a cotton opener is at work.¹⁰

Provided that if the feed-end of a Cotton opener is in a room separated from the delivery end by the partition extending to the roof or to such height as the inspector may in any particular case specify in writing. Women and children may be employed on the side of partition where the feedend is situated.

The provision of the section are not fulfilled if there is door made in a partition between two portions of the room and if it can be opened by a woman or a child employed.¹¹

The provisions which fall in the second category mentioned above (Provisions-applicable only to children below a specified age are -

(A) Prohibited the employment of child unless he has completed his fourteen years.¹²

(B) Certificate of fitness in so far as a distinction is made between a certificate of fitness to work in a factory where a young person has completed his 14th

9. M. Cofferty v. Brown; (1950) SLT 856

10. ibid., section 27

11. Cromodia v. Emperor; Bom., 52-27 L.J. 165, 1927

12. ibid., section 67

year and such a certificate granted where a young person has completed his fifteen years and is fit for a full days work in factory.¹³

It was held that prohibition is absolute and not restricted to employment in one of manufacturing process thus a child employed as a sweeper to clean the floor of a factory is in contravention of the provision of the section even though he is not employed in any of the manufacturing process.¹⁴

The following employments are also prohibited by the court:

(i) The employment of children for purpose of sorting ground nuts in a yard closed to a room where machinery for decortication of groundnuts was used, was held to be employed in a factory.¹⁵

(ii) Children under 8 years engaged in platting strew in a work room, the advantage of which goes to mother, held liable to penalty.¹⁶

Those persons who are between 14 & 15 years. They can be employed under the following restricted conditions provided under section 68, 69 and 71 to 75 of the Act;

13. ibid., section 69(2)

14. Walker T.Ltd. v. Metindil ; (1916) 85 KB 1543

15. Ram Nathen v. K.E. (1927) AIR Mad. 435

16. Beedon v. Parrot, LKO 13 (1817) 718

(1) Such person should have a certificate of fitness issued by a surgeon and should carry a taken of such certificate.¹⁷

(II) The certifying Surgeon should follow the procedure laid down in section 69.

(III) They should not work at night i.e. twelve consecutive hours including the period from 9.00 P.M. to 6.00 A.M.¹⁸

(IV) They should not work more than four and a half hours a day.¹⁹

(v) The period of work is to be limited to two shifts.²⁰

(VI) The shifts should not to overlap.²¹

(VII) Such a child cannot also be employed in two shifts and cannot be allowed to work in more than one factory on the same day.²²

(VIII) The spread over is not to exceed five hours and should also not change except once in 30 days.²³

(IX) No child shall be required or allowed to work in any factory on any day which he has already been working in another factory.²⁴

17. The factories Act, 1948 Section 68

18. *ibid.*, section 71(1) (B)

19. *ibid.*, section 71(1) (A)

20. *ibid.*, section 71(2)

21. *ibid.*, section 71(2)

22. *ibid.*, section 71(2)

23. *ibid.*,

24. *ibid.*, section 74

(x) The manager of the factory should maintain a²⁵
register in respect of such child workers.

(xi) There should be display and correctly maintained
in every factory in which children are employed in
accordance with the provision of sub section (2) of S.108
a notice of periods of work for children showing clearly
for every day the period during which children may be²⁶
required or allowed to work.

(xii) No child shall be employed in any factory otherwise
than in accordance with the notice of periods of work for
children displayed in factory and the entries made before
and against his name in the register of child workers of²⁷
the factory.

(xiii) Empowers the inspector. to require any such person
for re-examination by Surgeon and he may prohibit the²⁸
employment till the examination is made.

The section authorises the State Government to
make rules for the purpose stated in sub-section (A), (B)
(C) and (D) of this section and within the limits pres-²⁹
cribed under the Act.

State Government is empowered by this Act to make
rules prescribing the maximum weights which may be lifted³⁰
by adolescents and children .

25. *ibid.*, section 73

26. *ibid.*, section 72

27. *ibid.*, section 74

28. *ibid.*, section 75

29. *ibid.*, section 77

30. *ibid.*, section 34(2)

The objects of these statutory restriction, of the employment of young persons is to prevent exploitation of young labourers and provides for their safety. This view was held by Narasimha, C.J., Orissa High Court in Jhunw³¹alla v. B.K. Patnaik, where the occupier of a glass factory was severely punished for employing 14 adolescent in belowing section of the factory which is a hazardous occupation, without a certificate of fitness required under section 68, and 69 of the Factories Act.

These are broadly the provisions in the Act for protection of children. The inspectors have the power to see the enforcement of the various provisions. The Act makes provisions for penalties for contravention of the provisions. Thus an employer is punishable with imprisonment for a term up to three months or a fine up to Rs.500 or with both. There are also penalties on adolescents (Persons over 15 years of age) for using false certificate of fitness or allowing certificate issued to them for being used by others. Then there is a penalty on parents or guardian for permitting double employment to a child.

The Act makes provision for creches to be provided by the employer in factories employing 50 or more women workers for the use of children under 6 years of age.

The Factories Act does not apply to such factories where the strength of workers is below 10 in a case where a manufacturing process is being carried on with the aid of power and below 20 where it is being carried on without the aid of power. There is therefore, no statutory protection to children employed in such factories. However the State Government may extend all or any of the provision of the Act to other premises where manufacturing process is being carried on where the number of the workman employed are less than those specified, except where the work is done solely with the help of the members of the family.

Besides weekly rest of one day, every child worker who has worked for a period of 240 days or more in a factory during a calender year is entitle during the subsequent year for leave with wages at the rate of one day every 15 days of work as against every twenty days in case of an adult worker.

And according to provision of the Factories Act the employer is punishable with imprisonment for a term upto Rs. 500/- or with both for contravention of this provision.

The Act also impose penalty of fine upto rupees fifty on a parent or guardian for permitting double employment of a child.

(2) The Children (Pledging of Labour) Act, 1933:

This Act prohibits the making of agreement to pledge the labour of children and the employment of children whose labour has been pledge under such an agreement. The Act extends to the whole of India except the Jammu and Kashmir^{31A}, child under the Act means a person who³² is under the age of fifteen years (section 2) Agreement to pledge the labour of a child".

The Act declares an agreement, oral or written, to pledge the labour of children, whereby the parent or the guardian of a child, in return of any payment or benefit to be received or to be received by him under take the cause or allow the services of the child to be utilised in any employment but provided that an agreement made without detriment to a child and not made in consideration of any benefit other than the reasonable wages to be paid for the child's services and terminable at not more than a weeks notice is not an agreement within the meaning of this definition.³³

According to section 3 the Act declares void an agreement written or oral to pledge the labour of young children fifteen years by the child's parent or guardian in³⁴ return for any benefit or payment.

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- 31A. Section (1) (2) of Children (Pledging of Labour) Act, 1933
 - 32. Section (2) of Children Pledging of Labour Act, 1933
 - 33. Section (3) of Children Pledging of Labour Act, 1933
 - 34. Section (3) of Children (Pledging of Labour) Act, 1933

A parent or a guardian making an agreement to pledge the labour of a child is punishable with fine which may extend to fifty rupees.³⁵ Making with the parent or guardian, an agreement to pledge the labour of a child is also punishable with fine which may extend to two hundred rupees.³⁶ Further employing a child whose labour has been pledged is punishable with fine which may extend to two hundred rupees.³⁷

A civilized society does not recognise such an evil practice of child labour but the justification for this is that, in India due to object poverty the parents may be constrained to pledge their children for labour and such a practice existed in some parts of the country in the past.

(3) The Employment of Children Act, 1938:

This Act regulates the employment of children in certain industrial employments. It extends to the whole of India, except the Jammu & Kashmir. The provisions are related to the age group.

No child who has not completed his fifteen years shall be employed or permitted to work in any occupation connected with transport of passengers goods or mail by railway or connected with a port authority within the limits of any part.³⁸

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- 35. Section 4 of Children (Pledging of Labour) Act, 1933
 - 36. Section 5 of Children (Pledging of Labour) Act, 1933
 - 37. Section 6 of Children (Pledging of Labour) Act, 1933
 - 38. Section 3(1) The Employment of Children Act, 1938

A child who has completed his fifteenth year but has not completed his seventeenth year cannot be employed or permitted to work in any occupation referred to in sub-section (1), unless the periods of work of such child for any day are so fixed as to allow an interval of rest for at least twelve consecutive hours between 10 P.M. and 7 P.M. as may be prescribed by rules made by the
39
Government.

The Act further prohibits the employment of children below the age of fourteen in work-shops connected with bidi making carpet weaving, cement manufacture, cloth printing, dying and weaving, manufacture of matches, explosives and fire, work ,Mica cutting and splitting, shellac manufacture, soad manufacture soap manufacture, canning etc.. The State Government may add any other manufacturing process to which this prohibition is to apply. Provided that nothing in this sub-section shall apply to any workshop wherein any process is carried on by the occupier with aid of his family only and without employing hired labour or to any school established by or receiving assistance or recognition from
40
a State Government.

There are in the Act the usual provisions for inspectors and maintenance of register, etc. The dispute with regard to age is to be determined by the prescribed
41
medical authority.

39. *ibid.* section 3(2) the Employment of Children Act, 1938

40. Section 3(3) the Employment of Children Act, 1938

41. *ibid.*, section 3 (E)

The employer shall be punishable with simple imprisonment which may extend to one month or with fine⁴² which may extend to five hundred rupees or with both.

In such cases where any employer, employs or permits to work in contravention of provision of Section 3 or fails to give notice as regular by Section 3(d) or fails to maintain a register as required by Section 3(D) or makes any false entry in any register.

The employment of children (Amendment) Act, was adopted by Rajya Sabha on November 21, 1985 after it was passed by the Lok Sabha. It is improvement on Act of 1938 in that it provides for punishment is only a year imprisonment with or without Rs. 2000 fine for first time offenders.

But the child labour (Prohibition and Regulation) Act, 1986, repeals the employment of Children Act, 1938 and reproduces Section 3(1) and Section 3(3).

(4) The Minimum Wages Act, 1948:

The Minimum Wages Act provides for the fixation and revision of minimum rates of wages. It extends to the whole of India, except, Jammu and Kashmir and it applies to the specified employments. These are specified in the Act, but the schedule can be added by notification by the appropriate Government.

42. Ibid., Section 4

The Act specified that the expressions "adult" adolescent" and "child" will have the meanings respectively assigned to them in section 2 of the Factories Act, 1948.⁴³

It is not very clear, however, whether these definitions by reference have any particular significance for the purpose of the Minimum Wages Act since the Act does not seem to contain any important prohibition or regulatory provision applicable only to child labour, except that it provides that fixing or revising rates of wages, different minimum rates of wages may be fixed for adults⁴⁴ adolescents, children and apprentices.

The Central Government is empowered to make Rules for certain purposes fixing the "normal working day" (section 3(1) (G) read with section 13) Rules 34 of the Minimum Wages (Central) Rules, 1950 made under the Act provides, inter alia, that the number of hours which shall constitute a "normal working day" in the case of a child shall be $4\frac{1}{2}$ hours. In effect, this prohibits the employment of children for more than $4\frac{1}{2}$ hours for any in the employments to which the Parent Act applies.

13. The Factories Act 1948, Section 2 (A)

14. *ibid.*, section 3 (3) (A)

(5) The Plantation Act, 1951:

This Act provides for the welfare of labour in plantation and regulates the conditions of work of such labour. The Act extends to the whole of India except the State of Jammu & Kashmir. It applies in the first instance to all tea, Coffee, rubber and Cinchona plantation but any State Government may, subject to the previous approval of the Central Government by notification in the official Gazette apply it to any other class of plantations within the State. ⁴⁵

Child means a person who has not completed his fifteenth year and this provides that child who has not completed his twelve year shall not be required or permitted to work in any plantation. ⁴⁶ Women and child workers shall not be employed in any plantation, otherwise, than between the hours of 6.00 A.M. and 7.00 P.M. except with the permission of the State Government. ⁴⁷ The Act restricts the hours of work of a child in any plantation to 40 hours a week.

Every child above 12 and every "adolescent" that is to say, a person who has completed 15 years but has not completed 18 years, may be employed in a plantation, provided they obtained a certificate of fitness, from Surgeon (Sec.26). The certificate is valid for one year at a time (section 27(2)).

45. Plantation Labour Act, 1952 (4)

46. Section 24; Plantation Labour Act, 1952

47. Ibid., Section 25

Where children between the age of 6 and 12 of worker employed in any plantation exceed 25 in number, the Act casts an obligation on the State Government to make rules requiring the employer to provide educational and medical, housing, facilities for children in such a manner and of such standard as may be prescribed by rules (section 14).

The Act contains the usual provisions for offences and penalties on the lines of the Factories Act.

A bill to further amend the plantation labour Act, 1951 was introduced in Parliament on 3rd March, 1975 but it has not been enacted into law. The bill sought to extend the coverage of the Act by applying to small plantations as well, that is, to plantations which measures 5 hectares and employing 15 persons and to bring within its coverage other plantations, namely, citronella grass cardamom, arecanut, medicinal herbs, banana, apple, pine apple cashewnut, olive, cocoa or coconut.

The Government has introduced a bill in Parliament to amend the plantation Labour Act 1951 to ensure that it covers some new areas of health and safety. The Act attempts to prohibit or restrict handling of hazardous chemicals in plantations. It also prohibits employment of children below the age of 14 because it can be found that spraying

of pesticides, weedicides, chemical fertiliser, etc.
 it can done mainly by the non-adult labour force in
 47A
 plantations.

(6) The Mines Act, 1952:

This Act amends and consolidates the law relating
 48
 to the regulation of labour and safety in mines. It
 extends to the whole of India. The minimum age for
 employment in mines above ground is 15 years.⁴⁹

Child means a person who has not completed his
 50
 fifteen year child cannot even be present in any part of
 a mine which is below ground, and also above ground after
 such date as the Central Government may by a notification
 fix. A young person who is between 16 and 18 years of age
 (known as adolescent) is allowed to work in any part
 below ground if he has a medical certificate from a cer-
 51
 tifying surgeon that he is fit for work as an adult.
 Even then such a person cannot be allowed to work at night
 52
 (between 6 P.M. and 6 A.M. or between 10 P.M. and 5 A.M.
 in case the Central Government so notifies): There are
 provisions for medical examination of adolescents intervals

47A. Economic & Political Weekly, Oct. 17, 1992, Page 2287
 Plantation Labour Act and Child Labour, Sharit K Bhowik'
 48. Section 1(2) : The Mines Act, 1952
 49. Section 2(J); ibid
 50. Section 52(E), ibid
 51. Section 45, ibid
 52. Section 44, ibid

53

of not less than twelve months. An adolescent who does not possess a certificate from a certifying Surgeon may work in a mine above ground for more than $4\frac{1}{2}$ hours on any day and only between 6 A.M. to 6 P.M.

Whereas the Factories Act requires a medical certificate of fitness for every young person working in a factory, under the mines Act no such requirement is there for adolescents employed above ground in a mine. The reason for this seems to be that mines where adolescents are employed above ground may be small and situated at remote and scattered places where it may not be possible to have the facility of certifying surgeons. This is a lacuna in the Act as often the work in a mine above ground may be more stringent than work in a factory. The Mines Act may provide that in such cases the government may notify area or areas where the requirement of medical certificate will be necessary.

The Act contains provisions for the medical examination of adolescent at interval. Child shall be allowed to be present in any of a mine above ground where any operation connected with or incidental to any mining operation is being carried out. The mines contains the usual provisions for inspectors and maintenance of records.

53. Section 41(1) The Mines Act, 1952

54. Section 44-ibid

55. Section 45(2), ibid

56. Section 45(2), ibid

An employer contravening the provisions of child labour is punishable with imprisonment up to ⁵⁷ three months or a fine up to Rs. 1,000 or with both, like the Factories Act, the Mines Act has provisions for penalties for use of false certificates of fitness ⁵⁸ and double employment of Children.

(7) The Merchant Shipping Act, 1958:

This Act is the principal legislative measure dealing with merchant shipping sections 109 to 113 of the Act deal with the employment of "young persons", that is to say, person who are under eighteen years of age.

The Merchant Shipping Act, 1958 applies to sea-going ships. It has some provisions regulating employment of children. The Act bars employment in any capacity of a person below 15 years in a ship except, in a school ship, or training ship, in accordance with the prescribed conditions; or in a ship in which all persons employed are members of one family; or in a home-trade ship of less than two hundred tons gross; or where such person is to be employed on nominal wages and will be in the charge of his father or other adult ⁵⁹ near male relatives.

57. Section 73, 65 The Mines Act, 1952

58. Section 68, *ibid.*

59. The Merchant Shipping Act, 1958, Section (109).

The Act prohibits employment of person under the age of 15 as trimmers and stokers under certain specific conditions⁶⁰ such person if employed are required a medical certificate of fitness by a prescribed authority.⁶¹ Such medical examination is required at intervals of one year. Further Act empowered the government to make necessary rules regarding employment of young persons as and when the occasion demands. The responsibility of administering the Act rest with Director General of shipping.⁶²

Whereas, the Government of India has display keen concern for well being of child labour under the Central and State Children Act, to prevant child labour from harmful employment, exploitation, or ill treated with them, but earlier stated Acts not only inadequate but often it is not available, even not achieved the goal in missionary because of non-implementation of laws.

The Act imposes a fine upto rupees fifty on any person contravening these provisions.

(8) The Motor Transport Workers Act, 1961:

The Act provides for the welfare of motor transport workers and regulates the conditions of their work. It extends do whole of India.⁶³ This Act applies to every

60. The Merchant Shipping Act 1958 Section 110 (2)

61. *ibid.*, section 111

62. *ibid.*, section 113 (2)

63. The Motor transport workers Act, 1961.

motor transport undertaking employing 5 or more transport workers. The State Government however has been given power to extend all or any of the provisions of this Act, after giving not less than two months' notice of its intention so to do, to any motor transport undertaking employing less than 5 motor transport workers.⁶⁴

The Act prohibits employment of children in a motor transport undertaking, and a child who has not completed his fifteenth year shall not be required or allowed to work in any capacity in any motor transport undertaking.⁶⁵ An adolescent i.e. a person who has completed 15 years but not completed 18 years of age is allowed to work as a motor transport worker provided he has obtained a certificate of fitness. The certificate of fitness shall be valid for a period of 12 months from the date on which it is granted⁶⁶ but may be renewed. No adolescent shall be employed or required to work as a motor transport worker for more than six hours a day including rest interval of half-an hour and⁶⁷ between 10 P.M. and 6 A.M. Punishment for use of false certificate of fitness and for contravening the provisions regarding employment of motor transport workers is provided under Act.

64. *ibid.*, section 1(4)

65. *ibid.*, section 21

66. *ibid.*, section 22-23

67. *ibid.*, section, 14

(9) The Apprentices Act, 1961:

The Act provides for the regulation and control of training of apprentices and for matters connected therewith and it extends to the whole of India, except
68
Jammu and Kashmir.

"Apprentices training" means a course of training in industry, or established in pursuance of a contract of apprenticeship, and under prescribed terms and conditions which may be different categories of apprentices and control of training of apprentices in trades and for matters therewith.

The Act, provides that a person who has less than 14 years of age will not be qualified for apprenticeship training. In other words only children between the ages of over 14 years and below 18 years, and adults are eligible for training. The Act is to apply to such areas or industries as may be specified by the Central Government, and in relation thereto it applies only to designated trades which are notified by the Central Government after consulting the Central Apprenticeship council constituted under the Act.

68. *ibid.*, section 30, 31

There are to be the following authorities under the Act like National Council, Central apprenticeship Council, State apprenticeship Council, All-India Council, Regional Boards, Boards of State Council's of Technical education, Central Apprenticeship Adviser and State Apprenticeship Advisor.

The Act thus adopted a flexible approach and leaves most of the matters in the hands of the executive and the various authorities. The purpose of the Act are commendable and will go a long way in providing a sound training to children which would be an asset not only to the apprentices, but also the nation.

(10) The Atomic Energy Act, 1962:

This Act provides for the development, Control and use of atomic energy for the welfare of the people of India and for the other peaceful purposes and for matter connected therewith.

The Central Government, has made the Radiation Protection Rules, 1971, under section 30 of the Act, Rule 5 of these rules prohibits the employment of persons below the age of 18 year as radiation workers, except with the prior permission in writing of the competent authority, that is to say, an officer or authority appointed in this behalf by the Central Government, by notification under the rules.

(11) The Beedi & Cigar Workers (Conditions of employment) Act, 1966:

It extends to whole of India except Jammu and Kashmir. This Act provides for the welfare of the workers in beedi and cigar establishments and regulates the conditions of their work and for matters connected therewith. The Act applies to industrial premises where any manufacturing process connected with the making of beedi or cigar or both is being, or is ordinarily, carried⁶⁹ on with or without the aid of power.

'Child' means a person who has not completed fourteenth year of age and this Act provide that no child shall be required or allowed to work in any industry⁷⁰ premises.

A "young person" that is to say a person who has completed his 14 years of age and not completed 18 years of age shall not be required or allowed to work in any industrial premises except between 6.00 A.M. and⁷¹ 7.00 P.M. A young person is allowed to carry forward leave upto 40 days from one clendar year to another.⁷²

69. Section 2(1) of Beedi and Cigar works(condition of employment) Act, 1966

70. Section 4 of Children (Pledging of Labour) Act, 1933

71. Section 25 of Beedi and Cigar Works (Condition of employment) Act, 1966

72. Section 24 (4) of Beedi and Cigar Works (Condition of employment) Act, 1966.

There are no provisions for medical examination of young persons but it seems in their case the provisions of the Factories Act will be applicable if an establishment comes within the definition of the factory. The Act also Contains the usual provisions with regard
79
to offences and penalties.

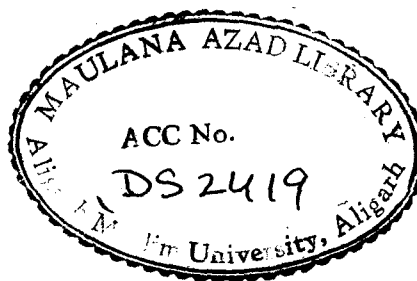
(12) The Shops and Establishment Acts invarious States:

Different States have enacted their own statutes regulating conditions of work of workers in shop and establishments. These Acts apply to shops, commercial establishments, restaurants and hotels and places of amusement at notified urban areas, to which the Factories Act does not apply. The State Governments are empowered to extend the application of the Act to such other areas or categories of establishments as may be considered necessary. The Acts prohibits the employment of a child in shop and establishments, and cannot be employed even as a member of the family of the employer. From time to time , these Acts have been amended to meet the situations. These Acts and rules inter alia regulate the daily and weekly hours of work, rest, intervals, opening and closing hours of establishment, payment of wages, over time pay, holidays with pay, annual leave. The prohibition on

79. Section 33; Beedi & Cigar Works(Condition '8 Employment , Act, 1966.

Employment of Children in different States varies from 12 years to 14 years.

These Act also prohibited the employment of young person during night. The time varying from 7.00 P.M. to 6.00 A.M. the hours of work for children are also varying in different states from 3 to 7 hours per day with half an hour to one hour break after 3 to 4 hours.⁸⁰



80. Indian Labour Year Book, 205 (1973)

Statewise special provisions for time, hours of work etc. For young persons under the shops and commercial establishments Acts.

State Union Territory	Age Definition	Permitted Employment	Hour of work	Res Interval	
				3	4
1	2	3	4	5	5
Andhra Pradesh	14-17	6 A.M. to 7 P.M.	7 per day per week overtime work not allowed	-	-
Bihar	12-18	-do-	Children @ 5 per day and 30 per week young person 7 per day 42 per week	$\frac{1}{2}$ an hour after $\frac{1}{2}$ 4 hours work.	
Gujarat	12-17	-do-	6 per day	$\frac{1}{2}$ hours after 3 hours work.	
Jammu & Kashmir	12-18	7 A.M. to 9 P.M.	-do-	-	
Manarashtra	12-17	6 A.M. to 7 P.M.	-do-	-	
Kerala	14-17	7 A.M. to 7 P.M.	-do-	-	
M.P.	12-17	7 A.M. to 9 P.M.	5 per day	-	
Karnataka	12-15	6 A.M. to 8 P.M.	-do-	-	
Orissa	12-15	Employment prohibited during night (between 10 P.M. & 6 A.M.)	-do-	-	
Punjab	14-18	to be fixed by Govt. 5 per day & 30 per week		$\frac{1}{2}$ an hour after $\frac{1}{2}$ 3 hour work.	
Rajasthan	12-15	Employment prohibited 3 per day during night		-	
Tamil Nadu	14-17	6 A.M. to 7 P.M.	7 per day and 42 per week	-	
U.P.	14-17	-	6 per day	-	
West Bengal	12-15	Not after 8 P.M.	7 per day & 40 per week	1 hour after 4 hours work.	
Delhi	12-18	8 A.M. to 8 P.M. in winter & 7 A.M. to 9 P.M. in summer	6 per day	$\frac{1}{2}$ an hour after $3\frac{1}{2}$ hours work	
Pondicherry	14-18	6 A.M. to 7 P.M.	7 per day or 42 per week	1 hour	

Source: Indian Labour Year Book, 1970 Labour Bureau, Simla, 1973, page 302

From the table depicted age, hours of work, time for rest and interval in various states under the Shops and Establishment Acts, the following conclusion may be drawn up -

Generally, the Children of less than 12 to 14 years of age have been prohibited from employment. However, those granted permission from 12-14 years, have been under certain constraints by the Act. In most of the cases, employer is prohibited to employ them other than 6 A.M. to 9 P.M. However, total hours of work must not exceed from 3-7 hours with a rest of $\frac{1}{2}$ to 1 hour of rest.

(13) Child Labour (Prohibition and Regulation) Act, 1986:

Many laws relating to child labour have been passed in India during the last century . To minimise the exploitation of the most vulnerable groups of the society, these laws have been amended, repealed and revised from time to time. It was found that the existing legal framework for the employment of Children in India is rather dispensed and patchy.

Therefore, here was a need for a single model legislation on child labour such that there were no anomalies on the issues like minimum age for employing children working hours, medical examination , minimum wages and penalties of

offences, etc. To meet this gap a significant legislative attempt to prohibit and regulate child labour was made on 23rd December, 1986 namely the child labour (Prohibition and Regulation) Act, 1986. The Act contains four parts and schedule. First part of the Act deals with preliminary and definitions of various terms.

Second part of the Act deals with prohibition of employment of children in certain occupations and processes.

Third part of the Act deals with regulation of conditions of work of children.

Fourth part of the Act deals with miscellaneous like penalties, procedure relating to offences and appointment of Inspector etc. The schedule of the Act contains the list of occupations and processes which prohibits the employment of children below 14 years according to section 3 of the Act.

Child Labour Act, 1986 states its objects as prohibiting employment of children in certain occupation, regulating the conditions of work in permissible occupations and obtaining uniformity in the definitions of child in various laws relating to child labour.

Under this Act, "Child" means a person who has not completed fourteen years of age whereas in earlier Acts, it was varying from twelve to fourteen years.

"Establishment" includes a shop, commercial establishment, workshop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

"Workshop" means any premises (including the precincts thereof) where in any industrial process is carried on, but does not include any premises to which the provisions of section 67 of the Factories Act, 1948, for the time being, apply.

"Appropriate Government" means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oil-field, the Central Government; and in all other cases, the State Government. "Family" in relation to an occupier, means the individual, th wife or husband, as the case may be of such individual, and their children, brother or sister of such individual.

As regards the magnitude of the problem, it is quite enormous in India. Statistics vary according to 1981 census, there were 13.59 million working children in India, while the national sample survey presents a figure of 17.36 million. The operation research group, estimated a figure of 44 million working children, by using the definition of any child between the age group of 5 to 15 years-Working in either paid or unpaid jobs within or outside the family. It is estimated that 21 percent of the working children are in urban areas and the remaining in rural India.

A Common phenomenon is that children are paid a meagre amount, but made to work for long hours without any paid holidays or recreation. The vulnerable group of child workers are those working in extremely hazardous task and female children who are devoid of any social or economic support from their family.

The New Act repeals the employment of Children Act, 1938 but reproduce in schedules A and B . The same prohibited occupation and processes as the employment of Children Act except that new Act also includes a prohibition of work in the building and construction Industry. The new legislation is different from earlier Acts in that it regulate child labour in those occupations where a child may work without penalties under the Act are more stringent and voilating the provision relating to child labour in certain other Acts results in a penalty.

No child under fourteen may work in the certain occupations setfourth in Part A of the schedule, first and Part B.

The Act lays down the broad regulations of conditions of work of children. These are applicable to enly permissible of occupations and processes of Juvenile employment. A child can work for a maximum six hours per day with an hours interval of rest after three hours of work. Children are prohibited to work overtime and between 7 P.M. and 8 A.M. Every working

child should be given a full holiday per week. Health and safety rules for working children are to be framed⁸¹ and implemented by the respective State Government.

81A

(ii) Salient feature of the Child Labour Act: No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishment. The Act⁸² regulates the following provisions:

(1) A Child may work longer than the maximum a hours permitted for that class of establishments.

(2) No period of work may be longer than seven hours and the child must have an hour of rest before working for more than three to four hours.

(3) No child may work between 7.00 P.M. and 8.00 A.M.

(4) No child is allowed to work overtime.

(5) A child may not work in two places at the same time.

(6) That the every employer will keep a register available for the inspector listing the name, date of birth, hour of work and rest and nature of⁸³ work and other particulars of the child worker.

(7) Any dispute arises for the age of the child will be settled by the prescribed medical authority and⁸⁴ the age thus certified will be deemed conclusive.

81. Part III of the Act

81A. A.C.L. (Prohibition & Regulation) Act, 1986

82. Section 7, The Child Labour (Prohibition & Regulation) Act,

83. Section 11, The Child Labour " " 1986

84. Section 10, The Child Labour " "

(8) The Part IV lay down the penalties for offence, the procedures and powers to make rules or amendments, and also some specific amendments to the earlier Acts of 1948, 1951, 1958, and 1961. For employing Child or permitting any child to be employed in contravention of the provisions of the Act, the punishment prescribed is imprisonment for a term, which will be a minimum of three months, extendable upto one year, or fine of rupees ten thousand to twenty thousand or both as the case may be.⁸⁵

The Act provides for enactment by the appropriate Government, make the Rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.⁸⁶ The rules may provide for anything related to health and safety, including cleanliness lighting, training and supervision to work and dangerous machines, fire safety etc. The Beedi and Cigar Workers' Act that every industrial premises shall be kept clean and free from any drain, privy or other nuisance, calcur washing on varniship on painting as may be prescribed.⁸⁷

For the purpose of preventing injury to the industrial premises shall maintain such standard of lighting, ventilation and temperature as may be prescribed. Further providing for canteen, rest, shelter, drinking water supply conservancy services, first aid, bathing, cleanliness facilities for the workers.⁸⁸

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85. Section 14 ,The Child Labour (Prohibition & Regulation)
 86. Section 13, " " " Act, 1986
 87. Section 8 " " "
 88. Section 14, The child labour "

- (ii) Recommendations of Government Committees: The Child Labour Act, 1986 states its object as prohibiting employment of children in certain occupation, regulating the conditions of work in permissible occupations and obtaining uniformity in the definitions of child in various laws relating to child labour.

The first ever Government; body to formulate laws on child labour in India was the Royal Commission on labour whose Report of 1931 established the basis for the employment of Children Act, 1938. Among other things, this Act listed the Industries forbidden from employing children. Then in 1979 the Gurupadaswamy Committee Report made recommendation to the government; to bring about a comprehensive legislation and establish a uniform definition of child labour to regulate the conditions of working children and also fix the minimum age at fifteen for children to be in any employment. In 1984, the Sanat Mehta Committee, however, expressed the view that since children work in totally diverse conditions all over India, it was not practical to have a single comprehensive law to deal with all aspects of working children in different industries. The recommendations of both these high level committees were accepted in part by the Government of India, which passed in 1986, the Child Labour (Regulation and Regulation) Act, 1986.

(iii) Problems in implementation of the Act: The problems of implementation of law became more complex with this allowance.. Employers are aware of this clause and on investigation, they claim that the child workers in their establishment are their own family members (Naidu, 1988, 1989) while their physical features are weak; fragile, underdeveloped, and undernourished department, tattered clothes clearly give away the employer's false assertions. Thus, provisions have made child labour legitimate unless proved guilty. According to the Act, for the health and safety of children employed or permitted to work in any establishment, the State Governments were to formulate rules and implement them. So far, the rules have not been framed and, hence, the question of their implementation does not arise.

The existing staff is inadequate to undertake the task of implementing the child labour (Prohibition and Regulation) Act.

There has not been many cases filed by the Government; Inspectorate for violation of the Act by employers must be answerable to Government. Both for banning and regulating the working conditions of children, realistic assignments are to be worked out for the staff in the labour and Industry Departments.

The Act falls within the purview of both the Departments of Industry and labour. Since they constitute two different ministers, the problem of coordination is acute. The noble ministry for issues related to child labour in the ministry of labour, on account on which the attitude of the other ministry is one of utmost indifference if not total unconcern. Although, child labour is most prevalent in some of the industries, the Department of Industry does not give much importance to the problems which arise.

The Government of India has taken the view that child labour is result of poverty and since poverty can not be immediately eradicated, it would be appropriate, in the short run to prohibit children from taking to hazardous ones, through legislation. The child workers are subjected to pressures of exploitation, it ought to be provided for in the law for social welfare organisations to have the right to intervene on behalf of the children. It is necessary for the Government also to have such a legislation to protect children. The Government; policy also envisages the establishment of machinery at both the National and State levels to facilitate implementation.

The goal of abolition of Child labour has to be understood as being implicit, and unless it is explicit, and some definite time bound measures are strictly taken, child labour cannot be abolished. Child labour is a complex phenomenon of poverty. A package deal with inter-sectoral

approach, cutting across education, manpower planning, industry and rural development sectors need to be worked out to face the problem of working children and their families. Otherwise, the child labour Act and even the national child labour policy on child labour will turn out to be token gesture.

Although more data are required though epidemiological studies on the occupation specific ill-effects of child labour, it is very clear that children have psycho-physical and social risks if they join the labour force in early years of the life (Naidu and Parasuraman, 1985) legislative abolition of child labour is not the answer and similarly, inadequate legislation causes problems in protecting the interests of children.

(iv) Short coming of the Act: Unfortunately the New Act also keeps most of the loopholes present in the earlier Acts.

Firstly - the Act covered only 10 per cent of the total working children in India. Children working in the unorganised sector are not protected. The Act does not add anything to the list of hazardous occupations.

Secondly-the Act does not ban Child labour even where hazardous processes are carried out in any workshop if the processes is carried on by the occupier with the aid of his family or to any school established by or receiving

assistance or recognition from the Government. Obviously a hazardous process does not become less so merely because it is carried on in a school or by a family. This clause in the Act exists although Article 24 of the Constitution explicitly prohibits the employment of children below fourteen years in any hazardous employment.

Thirdly - the Act prescribes no minimum age for the employment of children to work in permitted occupations.

Fourthly - until now, no specific rules for regulation under part III of the Act have been framed. It was stated in the Act that the provisions of the Part III of the Act shall come into force on such dates as the Central Government may be notification in the official Gazette appoint and different dates may be appointed for different states and for different classes of establishments. But unfortunately these rules have not yet been framed.

Lastly - There is no commitment on the part of Government to implement of the punishment for employing children does not fulfil the object of the Act, unless it is effectively implemented. Most of the industrialists stated that they did not have to worry about the Government machinery because they can always bribe the labour officers who visit the work place. Moreover, the employers get advance notice of the

visits of the officers. The Labour Officers on their part stated that they dared not prosecute many industrialists because of their political clout . In fact they mentioned that some employers of child workers are legislators.

The Complete abolition of child labours one of the cherished goals of a civilised society. Legalising the employment of children will be a retregrate step with adverse constitutional implications for society a whole.⁸⁹ Joseph Ghathia described the situation as " a silent conspiracy against children". Unless the Government is prepared to tackle the vested interests behind this evil and deal with its deeper causes, the abolition of child labour cannot be achieved.

89. Nirmala Lakshman " A World of endless exploitation".
The Hindu, Oct., 2, 1988, page 17.

CHAPTER - IV

CONSTITUTIONAL SAFEGUARDS AND JUDICIAL ATTITUDE

- (1) Constitutional provisions relating to child labour.
- (2) Judicial attitude on abolition or regulation of child labour.

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CONSTITUTIONAL SAFEGUARDS AND JUDICIAL ATTITUDE

Observations of the Witley Commission, the labour investigation committee 1946, and various statements and observation of many social reformers on the evils of existing child labour depriving the children of education and health, influenced the framers of our Constitution. Therefore, one of the main objectives of our constitution is the protection of children from adverse effects of their Employment on their physical and mental development.

The philosophy of the Indian Constitution is enshrined in the preamble which resolves to provide security to all its citizens inter alia - affords, "Justice- Social, economic, and political". The constitution of India provides for the care of development of children and adequate facilities for proper development of its future citizens as is evident from Articles 15, 23, 24, 39, 42, 43, 45.

It is significant that the study of the constitutional provisions in respect of child labour is important in two respects: In one way, it provides protection to the child, labour, another. it lays down the basis for framing the laws with regard to child worker.

The provisions of our constitution relating to the Children are as follows:

Article, 15(3) of the Constitution empowers, the State to make special provisions for the advancement of women and children. The framers of the Constitution were fully aware that women and children need special care and treatment because of their peculiar position in the Indian society. Article 15 (3) which was hitherto viewed as an exception to Article 15(1) of the constitution became another facet of the equality principle through creative judicial interpretation,² therefore the State is under a Constitutional mandate to make laws for the advancement of women and children.

Article 23 is also relevant. It says that "traffic in human being", "beggar" and "other similar forms of forced labour" are prohibited. Any contravention of this provision is an offence punishable in accordance with law, thus Article 23 confers a fundamental right against certain forms of exploitation. The provisions of the Indian penal code provide the punishment for such exploitation and Article 23 gives such punishment a constitutional sanction.

Article 23 prohibits the system of "bonded labour" because it is a form of forced labour within the meaning of Art. 24 which prohibits Employment of children in factories etc.

1. General Manager, Southern Railway v. Rangachari, AIR, 1962

2. Kerala V. N.M. Thomas, AIR 1976 S.C. 490 SC 38

Article 24 is another piece of the Constitution designed to protect children of tender age against the State and other private individuals. Article 24 prohibits the employment of Children below 14 years of age to work in any factory or mine or engaged in other hazardous employment this is a constitutional prohibition which even if not followed up by the appropriate legislation, must operate proprio vigore.³ Further Article 24 is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, one can not employ a child below the age of 14 years in a hazardous employment.⁴ It is therefore necessary to identify the employment which may be called "hazardous" employment.

Article 39(E) lays down that the health and strength of workers men and women and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.

Article 39(F) provides that children are given opportunities and facilities to develop in a "healthy" manner and in conditions of 'freedom' and 'dignity' and that childhood and youth are protected against exploitation and against moral and material abandonment. That the various states have enacted children Acts for the fulfilment of the constitutional obligation for welfare of children under Article 39(F) yet

3. People's union for democratic Rights v. Union of India, AIR 1982 SC 1973
4. Lakshmi Kant v. India, AIR, 1984SC, 463

it is not enforced in some States and the Court directed that such beneficial statutes should be brought into⁵ force and administered without delay.

Article, 42 required that the State shall make provision for securing just and human, condition of work. Article 42 provides the basis of large body of labour law that sustains in India.

Article 42 & 43, the Supreme Court has express a deep concern for the welfare of child labour. The courts may not engorge directive principle as such but they must interpret laws so as to further and not hinder the goals⁶ set out in the directive principle.

Article 43 requires that the State shall secure by suitable legislation, an economic organisation or in any other way all workers agricultural, industrial or otherwise, a "living wage", conditions of work, ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities etc.

Article 39(E) & (F) respectively indicates that these articles are wider in social content than Article 42 and Article 43 relates only to the working class, this will not apply to class, where a self-employment man takes the

5. Sheela Barge v. Union of India; AIR 1986, SC 1973

6. UP SE Board v. Hari Shankar, AIR 1979, SC 65

help of his family members including children, for gainful, this problem can be solved only by a faster rate of economic growth and social justice .

Under Article 45, a duty is imposed upon the State to provide free and compulsory education within a period of ten years of the commencement of the constitution for all the children until they complete the age of fourteen years. This directive signifies that it is not only confined to primary education, but extends to free education whatever it may be upto the age of fourteen years. Article 45 is thus supplementary to Article 24 on the ground that when the child is not to be employed between the age of fourteen years. He is to be kept occupied in some educational institution. Article 45 thus, ensures distributive justice to children in matters of education. It is suggested that Article 24 & 45 should be amended so as to rise the age limit from 14 to 16 years. By doing so the children's education at least upto matriculation would be ensured and the proper growth and development of their personality would be possible. There are various State Acts which stipulate the upper age limit of 16 years.

It is an evident from the constitutional mandate and direction that there must be suitable legislation to safeguard the interest of the child labour. Children form the working population of the country and they are the property of the nation requiring suitable protection.

Judicial Attitude On Abolition or Regulation of child labour:

Judicial Activism is a potent weapon in the hands of judges to exercise their wisdom on the removal and regulate the socio-legal problem for which there is no express provision. It is through this weapon that judiciary is harping upon child labour to prohibit in its own way, whenever, it got any opportunity to do so. Thus, judiciary is successfully engaged in transforming the constitution as a document of social transformation. Moreover, Judges recognising the socio-economic constraints of Indian society stressing upon regulation of child labour in non-hazardous employment and prohibiting in hazardous industries.

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In Asiad Workers Case - It was contended that the employment of children Act, 1938 was not applicable in the case of children employed in the construction work of Asiad projects in Delhi since construction industry was not a process specified in the schedule to the Act. The Supreme Court rejected this contention and held that the construction work is hazardous employment and therefore under Article 24 of the Constitution no child below the age of fourteen years can be employed in the construction work even if construction industry is not specified in the schedule to the Act.

7. People Union for Democratic Rights v. Union of India;
 AIR, 1982 SC 1473.
 popularly known as Asiad Workers' case

Bhagawati, J. advised the State Governments, to take immediate steps for inclusion of construction work in the schedule to the Act and ensure that the constitutional mandate of Article 24 is not violated in any part of the country. The court has emphasized that Article 24 embodies a fundamental right which is plainly and indisputably enforceable against everyone. By reason of its compulsive mandate no one can employ a child below the age of 14 years in a hazardous employment like construction work. The contractors are thus under a constitutional mandate not to employ a child below the age of 14 years on construction work.

It is also the duty of the Union Government; Delhi administration and DDA to ensure that the contractors to whom they have entrusted the construction work obey this obligation. The decision of the court in the instant case paved the way to prohibit employment of children below 14 years even in the construction industry.

A high water mark in the application of Article 24 of the Constitution has been reached in "labourers working
8
on Salal Project wherein the court reiterated the above ruling the court maintained that child labour is an economic problem. Poor parents seek to augment their

8. Salal 'Hydro Project v. State of Jammu & Kashmir;
AIR, 1984 S.C. 177

meagre income through employment of their children so a total prohibition of child labour in any form may not be socially feasible in the prevailing socio-economic environment. Article 24 therefore, puts only a partial restriction on child labour. The Court further observed that so long as there is poverty and destitution in this country, it will be difficult to eradicate child labour. The Supreme Court in "Salal Hydro Project", case-has observed that the Central Government should provide the children of construction workers who are living at the project site facilities for schooling, transportation etc. However, as the child workers cannot attend normal schools during the usual school hours, the only alternative is to provide them with some agency of education at a time when they are free. The usual practice has been to set up evening or night schools for such children. But the problem is after a whole day of work and in most cases the work being boring & exhausting in nature the child naturally does not have any energy left to join evening or night school even if motivated to learn.

This necessitates to the introduction of the concept of the holiday school. In the US, the Sunday Schools served for a long time as the principal agency of education for the children, who could not join regular day

schools for one reason or the other. The holiday schools also established as an effective platform for social exchange among the children which child workers rarely get in the unnatural life they lead. This will help a proper socialisation of these children and promote the development of a healthy personality in them. The holiday schools can also function as a suitable venue for cultural participation and recreational experiences for working children.

Further, Article 24 is plainly and indubitably enforceable against every one and by reason of its compulsory mandate, one can not employ a child below the age of 14 years in a hazardous employment. Lakshmi Kant v. India⁹. The provision raises a question as to what are the 'hazardous' employment. In that case the court has taken opportunity to lay down guide-lines for adoption of Indian children by Foreign parents as there is no statutory enactment for the purpose. The court has stated that the primary purpose of giving child in adoption must be his own welfare. A significant expression of children is to be found in the constitutional and legislative provision which govern the rights of children and obligation of Government, society and family towards children and India strine to be a welfare state. Thus, it is its duty to protect the welfare of children.

9. Lakshmi Kant v. India, AIR, 1984 S.C. 463
The great importance of Child labour in India.

The observations of the Court in the above cases were aimed to give true effect and spirit to the neglected constitutional dictates relating to the development of children. It is hoped that both the union and State Governments will do everything upto the expectations of the Supreme Court to improve the all round progress of the child and also to end the exploitation of docile and innocent children.

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Further in "Sheela Barse", S.C. said that though various states have enacted Children Acts for the fulfilment of the constitutional obligation for welfare of children and Article 39(F) yet it is not enforced in some States and the Court directed that such beneficial statutes should be brought into force and administered without delay.

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In Hari Shanker, the Supreme Court has emphasized that the Constitution express a deep concern for the welfare of workers. The courts may not enforce directive principles as such but they must interpret laws so as to further and not hinder the goals set out in the Directive principle.

10. Sheela Barse v. Union of India, AIR 1986 , SC 1773

11. UPSE Board v. Hari Shanker, AIR, SC 65

The Courts in a series of cases unequivocally declared that right to education is an integral part of right to personal liberty embodied in Article 21 of the Constitution. These judicial mandate demonstrates that right to education is necessary for the proper flowering of man, his mind, and personality. Hence the right to education is one of the facets of right to personal liberty. That is why, constitution bars the employment of children upto fourteen years and provides for free and compulsory education.

From the above, the child labour is the by product of our socio-economic conditions. In the context of the present socio-economic conditions this evil can not be eliminated but only be regulated. A move to ban child labour would cause great hardship to the families of the working children.

CHAPTER - V

SURVEY REPORT ON CHILD LABOUR
IN LOCK INDUSTRY AT ALIGARH

SURVEY REPORT ON CHILD LABOUR IN LOCK
INDUSTRY. AT ALIGARH

A century old, Aligarh lock industry is cropping up in the form of small as well as big industrial units on the availability of trained and skilled labour on low wages, further, supplemented by child labour on meagre payments under polluted environment or as a family worker.

Child labour is also an important factor in the development of lock industry as it does not require highly skilled labour. Mostly, child labour is handed down automatically from one generation to another generation as a family occupation. The artisans, running, their units on family basis, train their children and near relatives in the art of lock-making.

Moreover, children see their ancestors in the lock manufacturing process from their childhood as a family occupation. Thus, the children learn the lock-manufacturing from their childhood, first by seeing, then, engaging themselves in family occupation.

During survey, first of all, I surveyed the families of child labour with a view to get first hand information about their status, literacy, economic constraints and so on. As to what prompted the children to

work, it was found during survey that socio-economic condition of their parents is very grim, pitiable and trammeling. They have no house to live in or have very small houses in dilapidated condition. Most of them are daily wage earners. They work the whole day, get wages in the evening, from that wages, they fill up their stomach and of their children. They are forced to live in polluted environment. Most of the child labour, of which I conducted survey of two areas, namely, Naurangabad and Khai-dora line there in illiteracy, ignorance. They are having pessimistic view rather than optimistic about educational system and reformatory measures.

Generally, parents of the child labour feel that children born to their families to work with them and share the burden of the family, rather than to provide them education and good atmosphere for their growth. Parents are having no recreation facilities except to enjoy their family. This factor prompted them to have large family size making it a burden upon their own children. Child labour when asked about education etc. They gave a befitting reply that I have to fed not only myself but also to my brothers and sisters. They further said that we have to manage for shelter, clothes etc. when the stomach is empty, who will bother for education and health.

Moreover, working children secretly complained about their father's bad-habits such as gambling, intoxication etc. So, their income is spent on their own hobbies leaving children apart for their livelihood. This factor also prompted much to contribute to child labour.

However, in some medium class families, only one kind of activity relating to lock manufacturing is carried out as a family occupation at their house of residence. In such cases, children of the family work in it as a family occupation. In this way, children are made to be acquainted with the family occupation as their parents also lack confidence in the existing education system to earn their bread and butter.

The following table shows the data with respect to status of child labour families. From these two tables of Naurangabad and Khai-dora, it can also be deduced as to what factors dominated in making the children to work;

Door to door survey report of Child Labour's residence at Naurangabad
1992-93

1992-93

Sl.No.	Name of the father/ guardian /Address	Name of the child	Family occupation	Working hours	Income' Family P.M. size	'Literacy' Age with dro- pent		
1.	2.	3.	4.	5.	6.	7.	8.	9.
1.	Babu Ram C/o Vir Med. Store Shastri Nagar Naurangabad	Daulat Ram	Lock worker N.H.	9.00 A.M. to 5.00 P.M. 8.00 hours	200	7 mem- bers	4th pass	12
2.	Suresh Chandra Chooran Waley, Vikas Nagar, Naurangabad	Dinesh	Handpress Worker non hazardous	"	350	5 "	Nil	13
3.	Chokhe Lal Sharma Eath Chungi, Vikas Nagar, Naurangabad	Sanjay	Nickel Po- lish worker, Hazardous	"	200	8 "	Nil	11
4.	Omprakash c/o Thankur Mahendra Singh, Vikas Nagar, Naurangabad	Sumita Shashi	Lock Manu- facturing N.H.	"	250	9	5th pass	11
5.	Smt. Het Ram, Dhanipur Mandi, Naurangabad	Girver Deyal	Hand Press N.H.	6.00 hours	100	6	Nil	10
6.	Raghu Raj Singh 386, Chavani, Naurangabad	Pushpak	Electro- pleting Hazardous work	8.00 "	150	7	Nil	12
7.	Raghubir, Vikas Nagar Eath Chungi, Naurangabad.	Ram Nivas	Nickel Po- lish, Hazar- dous works	"	400	10	4th Pass	14
8.	Omprakash Sharma H.No. 1/403, Nauranga- bad	Chandra Prakash	Lock Manufac- turing, N.H.	"	300	11	2 pass	13
9.	Smt. Dropa Devi 4 Shastri Nagar Naurangabad.	Kishan	Electropla- ting plants working Ha- zardous work	"	200		Ind	14

Door to door survey report of Child Labour's residence at Khaidora
1992-93

1.	2.	3.	4.	5.	6.	7.	8.	9.
10.	Mohd. Azad Alvi H.No. 603, Harijan Wali Gali, Khai- Dora, Aligarh	Sajid Ali	Lock work N.H.	9.00 A.M. to 5.00 P.M.	200	5	Nil	12
11.	Khursheed Begum	Md. Nasir	Nicle Polish Hazardous	"	150	8	3rd pass	10
12.	Ishaq Ali C/o Haji Yousuf, Lock Mer- chant, Khaidora	Md. Akram	Electro- plating Hazardous	"	250	5	Nil	13
13.	Mohd. Shakir C/o Haji Dawood Taley Waley, Khaidora	Javed Ahmad	Hand Press non Hazar- dous	10.00 A.M. to 5.00 P.M.	300	6	Nil	14
14.	Mohd. Ali C/o Chaman Milk Seller, Khai- Dora, Aligarh	Munna	Lock Jadai Hazardous	9.00 A.M. to 5.00 p.m.	200	7	5th pass	13
15.	Mohd. Sabir C/o Chaman, Milk Seller Khaidora, Aligarh	Sabir Ahmed	Buffing work Ha- zardous	"	150	9	Write only name	11
16.	Jameel C/o Yusuf Harija Wali Gali, Khaidora, Aligarh	Shakir Ahmad	Nicle Polish Hazardous	10.00 A.M. to 5.00 P.M.	400	6	"	14
17.	Nawab Hasan C/o. Jameel, Taley Wale, Khaidora, Aligarh	Shahid Khan	Hand Press N.H.	9.00 A.M. to 5.00 P.M.	350	8	4th pass	14

As I have already discussed the general factors in Chapter II responsible for the growth of child labour in India. But to find out the real factors responsible for the growth and existence of child labour in lock industry, I conducted a survey of their residence. The table above shows the report of this survey.

From the perusal of the aforesaid table, it is clear that the families Status is very low socially as well as economically. The families pursuing child labour have large family size, generally, ranging from five to eleven. Thus, the fathers are not sufficient enough to feed such a large family. That is why, small children are forced to earn livelihood for their brother and sister. These children work at very low wages due to their less bargaining power and economic constraint. Thus, the employers frequently and flagrantly violate the provisions of minimum Wages Acts.

Moreover, taking the advantage of peculiar condition of the labour, the employers employ the children in the hazardous employment, too, such as ~~electroplating~~ Nickel Polish etc., under the lock industry. The employers took work from children for more than the hours required under the various statutes, moreover, without interval as it is also required under the statutes.

The most striking factor in the growth of child labour is the high drop-out rate from schools as schools have become Centre for squanders instead of nerve centre for learning.

The present educational system failed to win over the confidence of socially as well as economically backward parents. This is why, first enrolling their children in schools, in return, as they learn nothing, so, their guardians prefer to make their children as artisans for the manufacturing of lock rather, than to have semi educated - neither fit for family occupation nor educationally qualified enough to get the job.

Now, after going into the details of child labour in lock industry and their analysis, I switch over to study statutory violation regarding child labour in lock industry at Aligarh.

Most of the lock manufacturing units at Aligarh are covered by Factory Act, 1948 and U.P. Shops Commercial and Establishment Act, 1962, Minimum Wages Act, 1948, Employment of Children Act, 1938 - upto 1986. In 1986, Employment of Children Act, 1938 had been repealed by child labour (Prohibition and Regulation) Act, 1986.

Thus, first of all I would like to analyse my survey report relating to those units which are covered by Factories Act, 1948.

The total number of factories registered under the Factories Act, 1948 is 162, out of which 152 belongs to lock industry. These factories covered by section 2M(1) and

(II) of the factories Act, ranging from twenty workers to seven hundred workers. Officially, there is no child labour in these registered factories. But, during survey, I found that when the factories are opened in the morning and closed in the evening, there are number of children going in and coming out of the factory. When I questioned them for my purpose, I was interrupted by adult workers and they pretended them as their own children either . . . came for calling them or with some personal work to their parents. Actually, it is not so, these children work there as child labour but work forced to be re-trenched if they give interview to any one regarding their employment.

Moreover, the owners of these factories take work on contract basis. Thus, child labour is employed indirectly by contractors.

Thus, due to my limited resources and time, I could only obtain this much of information regarding child labour in factories registered the Factories Act, 1948.

After taking up big manufacturing units it is incumbent to analyse small scale industries registered under U.P. shops and commercial Establishment Act, 1962.

The Children were employed in different establishments
under the shops & Commercial establishment, 1962

1992 - 93

S.No.	Name & Address of Establishments	No. of children	Age group	Working hours	Wages per day
1.	Rajeev Metal In- dustries, Shakti Nagar, Aligarh Prop-Kherati Lal	03	11-14	8 hours 9 A.M.to 5 P.M.	Rs.8-13 per day
2.	Oriental Products Mahavir Ganj, Aligarh Prop-Shiv Kumar	04	13-14	"	7-12
3.	Anand Electro- platers and Ana- lizers, Aligarh Prop- Usha Kela	05	12-14	"	"
4.	T Sons electro- platers, Aligarh Prop-Nirmal Singh	04	12-14	"	8-14
5.	Milton enterprises 9/48, Kanwariganj, Aligarh Prop-Mohd. Shahid	03	11-14	"	7-13
6.	Assam Lock Indus- try, Bani Israilan, Aligarh Prop. Rafi Ahmed	02	13-14	"	8-12
7.	American Lock Works, Upper Court, Aligarh Prop-Shabbir Ahmad	03	11-14	"	8-13
8.	M/s M.S.T. Products Parao Dubey Tola Market, Aligarh Prop- Mohd. Tahir	02	12-15	"	8-14

As provided under the U.P. Shops and Commercial Establishment Act, 1962, the children below the age of 14 years have been prohibited from employment. However, children of 17 years of age have been allowed to work under certain condition. But such children can only be employed for period of six hour per day with a rest of half to one hour.

When I surveyed the units under this Act, I found the frequent violations of the Act under the very nose of the authorities under the Act. The following table will show the number of child worker in each establishment with ages, hours of work and their wages.

Thus, it is clear from the table that the children employed by the employers are prohibited from employment due to their tender age and nature of work, even then they are employed on less wages and are compelled to do more work than required under the Act. Thus, their clear violation of law requires their prosecution under the Act.

Survey relating to the child employment and the statement of prosecution under U.P. Shops and Commercial Establish- Act, 1962 on March, 1993.

S.No.	Name of the Firms	'Date of Inspection	'Date of prosecution	'Under section	' Result
1.	Shree Ram Repairing Workshop, Khair Road, Aligarh	19-3-1993	24-3-1993	21	Result pending
2.	Ali Repairing Work- shop, Rasalganj, Aligarh	19-3-1993	"	"	"
3.	Susheel Espair ,Jail Road, Aligarh	18-3-1993	"	"	"
4.	Subhash Steel Ram- ghat Road, Aligarh	18-3-1993	"	"	"
5.	Akil Scooter Work- shop, Shahjamal, Aligarh	17-3-1993	"	"	"
6.	Rajaram Cycle, Repai- ring, Agra Road, Aligarh	22-3-1993	"	"	"
7.	Habib Bright Work- shop, Upper Court, Aligarh	22-3-1993	"	"	"
8.	Mohd. Vakeel Indus- try, Babrimandi, Aligarh	28-3-1993	29-3-1993	32	"
9.	Chand Electroplating Usmanpara, Aligarh	28-3-1993	"	(18) (13) (1)	"
10.	Rajeev Sharma, Lock Workshop, Aligarh	29-3-1993	"	(18) (13) (1)	"

Sources - based on the Labour Office, Aligarh

However, authorities under the U.P. Shops and Commercial Establishment Act, 1962 seems to be more stringent, stern and harsh, as the authorities concerned conducted the inspection of the establishments under the Act and initiated proceeding as is depicted in the following table;

Statement prosecutions under various Acts
during 1991 and 1992

S.No.	Name of the Acts	'No.of survey Inspection 1991	'Prosecu- tion	'No.of sur- veys ins- pection1992	'Prose- cution
1.	Factories Act, 1948	03	01	04	03
2.	Minimum Wages Act, 1948	02	01	-	-
3.	U.P. Shops and Commercial Establish- ment Act, 1962	08	03	15	04
4.	Employment of Children Act, 1938	02	01	05	02

Sources - based on the Factory Commissioner Office, Aligarh

From the above table it is clear that only in March ,1993, ten establishments were raided and prosecuted under various sections of the Act relating to child labour.

However, so far their has been no effective implementation of child labour (Prohibition and Regulation) Act, 1986.

Though the existing labour laws has been sufficient enough to regulate child labour in various establishment. Unfortunately these labour laws has been frequently violated at the cost of grim picture of child labour. It is clear from the following table, which depicts the number of surveys and prosecution thereof during 1991 and 1992 which are very less and that to prosecution started in fewer cases which is still in pending.

After having gone through my long journey from various statutes, now it seems necessary to make a separate study of child labour in hazardous employment under lock industry which in no case permitted to be employed even if their socio-economic conditions so requires such type of prohibition has been laid down on the humanitarian grounds that no person howsoever destitute should be put in hazardous employment not suited to their nature and health. In this connection section 87 of the factories Act, is noteworthy which prohibit the employment of adolescent or children

manufacturing process dangerous in nature. But children below 14 years of age are engaged in hazardous employment like buffing plants, power press, Nickel polish, spray paints and electroplating Metal Works. The electroplating process has dangerous operations under Rule 109 of the U.P. Factories Rules which declared that -

"Electroplating or oxidation of metal articles by use of an electro-lytic containing chromic acid or other chromium compound is declared to be a dangerous occupation".

Children working under this hazardous employments suffers from tuberculosis, complaint of breathlessness, asthma, acute headaches and upper respiratory tract diseases.

A Survey report of child labour in hazardous employment in various localities is shown below.

1992 - 93

118

95

Survey report on Child workers in hazardous occupations in various areas at Aligarh

1992 - 93

S.No.	Name of Mohalla	Strength'No. of Polish stands	Strength'No. of child workers	Strength'No. of power press stands	Strength'No. of child workers paint stands	Strength'No. of spray child workers	X	Age	Wages P.M.	
11.	Achal Talab	02	04	05	14	02	03	x	7-13	100-300
12.	Sarai Sultanj	03	10	06	12	-	-		8-14	100-400
13.	Sarai Rehman	02	05	04	11	-	-		8-14	150-375
14.	Upper Court	05	12	08	16	03	07		7-14	150-450
15.	Delhi Gate	-	-	07	13	02	05		8-14	100-400
16.	Turkman Gate	04	12	05	10	-	-		8-14	100-400
17.	Naurangabad	-	-	07	13	-	-		7-14	100-450
18.	Usmanpara	02	05	04	09	-	-	x	8-14	150-450

The Survey conducted in regard to working condition of child labour engaged in various occupations of lock industry. They work in power press, electroplating plants, buffing plant, Nickel polishing stand and polishing stand, spray paint, and metal work units. They exploited by employers and they are totally paid insufficiently, unsatisfactory payment.

Thus, it is clear from the above table that in spite of legislative efforts and judicial direction, child labour is still flourishing under the guise of economic hardships. Now, what is needed is the will power to eliminate child labour from hazardous employment and regulate in other employments to cope up financial crunch.

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C O N C L U S I O N

C O N C L U S I O N

To conclude, it can be said that problem of child labour is deep seeded and deep rooted in our country due to various reasons. Most important factor is the socio-economic condition under which they are forced to work. Moreover, it is human nature to exploit the comparatively poor, destitute and neglected masses for their personal gain. But due to harsh economic realities of the life of child labour, it is not possible to eliminate child labour in toto unless they are left in the streets to beg.

Anatole France observed:

"Egalitarian law of the society forbids rich and poor alike to sleep under bridges, to beg in the streets and to steal bread".

Constitutionally, we are committed to have an egalitarian society. So, according to Anatole France, in our society nobody can be left without food, clothes and shelter and no legislation for the welfare of child labour renders them to sleep empty stomach.

In the Rajya Sabha, Union Labour minister, Mr. Sangma explained that after penal action was taken against some glass industries for employing child labour, some

parents came to him complaining that they were starving as their children had been denied employment.¹

In such circumstances, government had to adopt a responsible approach. The government viewed the problem in the overall economic scenario and had initiated welfare measures such as education and health of the affected children. It was also implementing specific ILO assisted projects to gradually eliminate child labour.²

However, the pace of elimination of child labour requires to be put on high pedestal without any further delay.

Mr. Lewis, special representative to executive director, UNICEF said, "where the rights and needs of children are concerned, universality is not negotiable and conditionality is not acceptable".³ Moreover, there is apprehension among exporters that the impending U.S. legislation on child labour will adversely affect their trade Indeed, if American intervention does force this issue - as it may do in the case of human rights - it will be a shame. In that event, the blame will fall on domestic apathy, ill-considered belief in "comparative advantage gained because of access to cheap labour" and

1. Times of India, New Delhi (August 17, 1993)

2. Ibid

3. Times of India, New Delhi (June 22, 1993)

most shamefully, blatant non-implementation of the laws which are already on the Indian statute book.⁴

Rajya Sabha members criticized the government for "its indifferent attitude". South Asian Coalition on Child Servitude (SACCS) has accused the government of "not being at all serious" about implementing labour laws prohibiting child labour in hazardous employment.

Now, it is the empirical part of this dissertation which provide for social status of child labour. Most of the child labour belongs to sons of labour in the same industry and rest of them, work as a part of family occupation. The number of child labour in percentage in different age group is as follows:

Age Group	Child labour in percentage
8 - 11	6.4
11 - 12	38.3
12 - 14	55.3

Of the total workforce in lock-industry, around 20 per cent is shared by child labour. They are given meagre payments, unduely long hours of work in utter disregard of health. The 'bleeding heart' concern for

4. Times of India, New Delhi (August 6, 1993)

Child Labour is caused by their employment in hazardous work of lock industry, namely, electroplating, spray paint, power press, nickel polish etc.

In electroplating too, 70 per cent of the work, considered to be extremely hazardous, is done by children. Electroplating is dangerous for a variety of reasons since chemicals such as potassium cyanide ----- are commonly used. Secondly, electric current passes through these chemical tanks and children often get electric shocks. What make these units even more dangerous is the illegal electricity connections⁵ taken from street lights which often lead to electrocution.

Employment of child labour in hazardous work under lock industry attracted the attention of Centre of concern for Child Labour (CCFCL) working on the motto "it is better to light a candle than to curse the darkness" believes in 'action research' and campaigns for children working in hazardous occupations. The organisation works at three levels. To spread awareness on the problem, to work at the field level and to interact with the government and the international community in specifically eliminating Child⁶ labour from hazardous occupations at present CCFCL has three on going field programmes- one of which is in Aligarh among 260 lock making children. A major achievement of the

5. Times of India, New Delhi (August 2, 1993)

6. Times of India, New Delhi (April 28, 1993)

Centre has been in sensitising the Aligarh administration to additional health hazards of working in the lock industry. Before its intervention, asthma was considered the only health hazardous disease. CCFCL's health check-ups proved that many children's ear drums get ruptured⁷ by the polish, topped with iron dust, settling on it.

CRY - Child Relief and you, is an independent organisation committed to providing financial support to efforts in India which address the problems of neglected children vis-a-vis food, education, vocational training and health care, in the context of integrated community⁸ development.

Though, various voluntary organisations are working for elimination or regulation of child labour but still the magnitude of the problem is not under control. More concrete efforts are required in the interest of sheer pragmatism. Facility of free school education has made the practice of child labour almost non-existent in Sikkim.

From the survey report, it is clear that very few are prosecuted under the various Acts namely Factories Act, Shops and Establishment Act, Employment of Children Act etc. Moreover, Child Labour (Prohibition and Regulation) Act, 1986 being in force since 1986 but not a single isolator has been prosecuted till date. This shows the total apathy of the Government towards the problem of child labour. The machinery envisaged by the Act of 1986 is lethargic, passive, inadequate and ineffective. This is so, due to

7. Ibid.

8. Times of India, New Delhi, August 25, 1993.

two factors - firstly, inadequate staff to implement such laws, secondly, deliberate evasion of laws by employers in connivance with the concerned officers.

Above all statutes, the constitution of India, Supreme law of the land which expressly and implicitly provides for protection of child labour and their welfare, practically, failed to translate the dreams of the founding fathers into practice.

From the panoramic review of data collected and careful perusal of statutory provisions, and the more social nature of the problem, we are of the view that problem can not be eliminated at once, even if it is, at the cost of begging street children. So it is suggested to eliminate the problem gradually. Regulation of child labour is nothing but to live with child labour indefinitely. Thus this may be an effective device to achieve the ultimate goal namely the prohibition of child labour. It makes child labour costlier to the employer which is indirectly a prohibition.

So long as child labour remains cheap it would continue. But once it is realised that the employment of children is too costly which ultimately reduces the chances of profit in the commercial market which would ultimately discourage the employer from employing the children.

A comprehensive legislation, Child Labour (Prohibition and Regulation) Act, 1986 is already on the statute book to deal with the problem effectively and efficiently. Further, its amendment is also under consideration to avoid differential wages for adult and child labour. Government has launched a scheme which aims at providing care, protection and development of children.

Once again, it is recommended for effective implementation machinery. Now, the time has come when we must realize the gravity and intensity of the problem and the problem must not be viewed from political consideration. Our motto is to provide:

Justice - Social, economic and political assuring the dignity of the individual.

To sum up, R.N. Tagore's lines are worthy of quoting:

'Into the mouths of these
dumb, pale and meak
We have to infuse the language of the soul'.
Into the hearts of these,
Weary and worn, dry and forlorn
we have to minstrel the language
of humanity'.

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